3107

SUPREME COURT OF THE UNITED STATES.

No. 89.

LOUIS D. GAMACHE & AL., PLAINTIFFS IN ERROR,

VS.

FRANCOIS X. PIQUIGNOT AND THE INHABITANTS OF THE TOWN OF CARONDELET.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Affidavit of N. Holmes, plaintiffs' attorney	1a	1
Writ of error to Supreme Court	2a	1
Citation and service	4a	2
Writ of error to circuit court	6a	3
Petition	1	4
Summons and return	2	5
Judgment by default	3	6
Agreement	5	6
Defendants' answer	7	8
Verdict and judgment	10	10
Motion for new trial	10	10
Bill of exceptions	11	11
Acts of Congress, 13th June, 1812, and 1824	12	11
Confirmation certificate	12	12
Registry of certificates	15	13
Certified extracts—supplementary lists	16	13
Supplementary list, containing Gamache's claim	21	17
Exhibit A.—Extract from Hunt's minutes	25	20
Deposition of Moss	27	21
Hunt's minutes.—Testimony of Chatillon	25 & 35	20 & 27
Testimony of Dauphin	26 & 36	20 & 28
Corrected plat of common fields	38	28
Testimony of M. L. Clark	39	28
Conway	42	31
Survey No. 120—plat and des'n	45, 44	32

GIDEON, print.

	Original.	Print.
Description of survey	46	32
Surveys Nos. 3103 and 112 to 119, and plats X and Y	47	34
Voucher B	48	34
Instructions to Deputy Surveyor Brown	48	34
Instructions asked by defendants and rejected	48	35
Defendants' case, opening of	49	35
Transcript from recorder	50	35
The Gamache petition	50	36
Minutes of testimony	53	37
Soulard's return of survey	51	37
Minutes book 5, &c	55	38
Bent's survey of 48 arpent line	55	39
Document No. 1.—Translation of Gamache's petition	57	40
Conway's certificate of confirmation of commons	56	40
Evidence of Rector's survey	60	42
Translation of Soulard's return	58	41
Survey No. 3012	60	42
Renard's note to his translation of the Gamache petition	59	42
Testimony of Clark	62	44
Exhibit I.—Hunt's certificate to first list	61	43
Exhibit K.—Extract from Hunt's minutes relating to six claims	64	45
Evidence of Alvarez's claim	68	48
Deed of release to Calgan	69	49
Ordinances of Carondelet	70	50
Leases	71	50
Letter No. 1, of Com'r G. L. O	72	51
No. 3, of do.	75	53
No. 4, of do.	77	54
Milburn's testimony	78	55
Hamilton's statement, (bill of ex.)	78	55
Chartrand's testimony	81	57
Pourcell's testimony	85	59
Barada's testimony	88	61
Renard's testimony	92	64
Confirmation of commons	94	65
Hayward's instructions	94	65
Lease to Davis & Powell	95	65
Ordinances	95	66
Act of Legislature	95	66
Rebuttal.—Mackay's testimony	96	66
Testimony of Aug. Gamache	99	68
Gamache's petition, (translation,)	101	69
Gamache to Gamache, deed	101	70
Mackay's plat, &c.—Exhibit (b)	102	70
Exhibit (C).—Letter from Com'r G. L. O	102	70
Letter, &c.—Secretary of War to Gen. Atkinson	105	72
Exhibits (e) and (f).—Letters of Secretary of War	106	72
Letter to surveyor general from Com'r G. L. O	107	73

3108.

	Original.	Print.
Exhibit (g).—Letter of Secretary of Interior to N. & S. A. Holmes	108	74
Instructions for plaintiffs given	109	75
for plaintiffs refused	110	75
for defendants given	112	76
for defendants refused	113	77
Supreme court, assignment of errors	118	80
Judgment	120	82
Opinion	120	82
Appeal bond	131	88
[Assignment of errors	132]	89

DISTRICT AND STATE OF MISSOURI,
County of St. Louis, ss.

I, Nathaniel Holmes, attorney for the plaintiffs in error in the said cause of Louis D. Gamache and others versus François X. Piquignot and others, make oath and say, that I left a copy of the foregoing writ of error in the office of the clerk of the supreme court of Missouri, endorsed "A copy of a writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the above-named defendants in error," and signed by myself, as attorney for the plaintiffs, on the 4th day of April, in the year 1853, for the information of said defendants in error.

NATHANIEL HOLMES.

Sworn to and subscribed before me, this fourth day of April, A. D. 1853.

WM. S. GLANVILLE,
Clerk of supreme court, St. Louis.

UNITED STATES OF AMERICA, *ss.*

[L. S.] The President of the United States, to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Missouri, before you, at the October term, 1852, between Louis D. Gamache, Samuel and Leonore Gamache, by guardian, Wilson Primm and Louis Primm, John Cavender, and Abby P. True, plaintiffs, and François X. Piquignot and the Inhabitants of the town of Carondelet, defendants, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this 29th day of December, in the year of our Lord

one thousand eight hundred and fifty-two; issued at office, in the city of St. Louis, under the seal of the circuit court of the United States, for the Missouri district, the date last above written.

BEN. F. HICKMAN, *Clerk.*

Allowed by me. H. R. GAMBLE, *J. S. C., Mo.*

THE STATE OF MISSOURI, *ss.*

In obedience to the commands of the within writ, I, William S. Glanville, clerk of the supreme court of the State of Missouri, at Saint Louis, do herewith transmit to the Supreme Court of the United States, at Washington city held, a full, true, and complete transcript of the record and proceedings of our said supreme court, in the case of Louis D. Gamache, Samuel and Leonore Gamache, by guardian, Wilson Primm and Louis Primm, John Cavender, and Abby P. True, against François X. Piquignot, and the Inhabitants of the town of Carondelet, as decided by said court at the October term, eighteen hundred and fifty-two.

Witness my hand and the seal of said supreme court, at office in the city of Saint Louis, this twenty-second day of April, anno eighteen hundred and fifty-three.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

Fee $2, paid by plaintiffs in error.

United States of America to François X. Piquignot and the Inhabitants of the town of Carondelet, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Louis D. Gamache, Samuel and Leonore Gamache, by guardian, Wilson Primm and Louis Primm, John Cavender, and Abby P. True, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Hamilton R. Gamble, chief justice of the supreme court of the State of Missouri, this 29th day of December, 1852.

H. R. GAMBLE.

Served the within citation on the within named defendants in error, François X. Piquignot and the Inhabitants of the town of Carondelet, by reading the original and delivering a copy of the same to William Faussig, mayor of the said city of Carondelet, on the 13th day of April, 1853, and on François X. Piquignot, by reading the original and

delivering *and delivering* a copy of the same to him on the 19th day of April, 1853.

HIRAM H. BABER,
Marshal of the United States for the district of Missouri,
By FRANCIS JONES,
Deputy.

Service fee, $4 00
Mileage, 78

$4 78

THE STATE OF MISSOURI, *ss.*

Be it remembered, that on the tenth day of April, in the year of our Lord one thousand eight hundred and fifty-two, there issued from the office of the clerk of the supreme court of the State of Missouri, at St. Louis, a writ of error, which is in the words and figures as follows:

THE STATE OF MISSOURI, *ss.*

The State of Missouri, to the honorable the circuit court of the eighth judicial circuit, sitting in and for the county of Saint Louis, in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the Saint Louis circuit court, wherein Louis D. Gamache, Samuel and Leonore Gamache, by her guardian, Louis D. Gamache, Wilson Primm, Louis Primm, John Cavender, and Jacob True, were plaintiffs, against François X. Piquignot and the Inhabitants of the town of Carondelet, defendants, in an action of ejectment, manifest error hath intervened, to the great damage of the said plaintiffs, as by their complaint we are informed:

Now, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held at the city of Saint Louis, in the county of Saint Louis, in said State, on the third Monday in October next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness William S. Glanville, clerk of our said supreme court, and the seal of said supreme court, at office in the city of Saint
[SEAL.] Louis, the tenth day of April, in the year of our Lord one thousand eight hundred and fifty-two.

WM. S. GLANVILLE, *Clerk.*

The above writ of error was returned by the clerk of said circuit court on the seventh day of October, in the year of our Lord one thou-

sand eight hundred and fifty-two, with the following return endorsed thereon, to wit:

LOUIS D. GAMACHE et al.
vs.
FRANCIS X. PIQUIGNOT et al. } Transcript.

STATE OF MISSOURI,
County of St. Louis, ss.

In obedience to the commands of the within writ, I herewith transmit a true transcript of the record and proceedings in the within named cause.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office in the city of Saint Louis, this sixth day of October, eighteen hundred and fifty-two.

[SEAL.]

M. S. CERRE, *Clerk.*

The transcript of said record and proceedings is in words and figures as follows:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on the twenty-seventh day [of] March, 1849, a petition was filed in the St. Louis circuit court in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

In the St. Louis circuit court, April term.

The plaintiff, Louis D. Gamache, by Holmes, his attorney, Samuel Gamache, a minor under the age of twenty-one years, viz., of the age of sixteen years, by his guardian, Louis D. Gamache, Leonore Gamache, a minor under the age of twenty-one years, to wit, of the age of nineteen years, by her guardian, Louis D. Gamache, and Wilson Primm, Louis Primm, John Cavender, and Jacob True, by Holmes and Whittlesey, their attorneys, complain of François X. Piquignot, the defendant in an action of ejectmentt, for that the plaintiffs heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-nine, at the county aforesaid, were and still are entitled to the possession of all that messuage and tract of land situated in the county of St. Louis aforesaid, the same being United States survey No. 120 of the out lots and common fields of the town of Carondelet, as confirmed to John B. Gamache, senior, or his legal representatives, by the recorder of land titles, under the act of Congress of 1812 and 1824, and surveyed under the authority of the United States by the surveyor general of the State of Illinois and Missouri, bounded northerly by the common field of the town of Carondelet, east by Mississippi river, (leaving a tow-path,) southwardly by an

out lot claimed by the legal representatives of Gabriel Constant, (Lallemand,) senior, and westward by land formerly belonging to Antoine Reihl, as more particularly described and bounded in the field notes of said United States survey No. 120, on file in the surveyor general's office at St. Louis, containing two hundred and thirty-seven and thirty hundredths acres, more or less; and the plaintiffs being so entitled to the possession thereof, the said defendant afterwards, to wit, on the first day of March, in the year aforesaid, at the county aforesaid, entered into the said premises and unlawfully withholds from the plaintiffs the possession thereof, to the damage of the plaintiffs, as they say, the sum of five hundred dollars, and therefore they bring suit, &c.

N. & S. A. HOLMES, and
C. C. WHITTLESEY,
Attorneys for plaintiffs.

Upon which the following summons was issued in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss.*

The State of Missouri, to the sheriff of St. Louis county, greeting:

We command you to summons François X. Piquignot, that he be and appear before the judge of our circuit court on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the 3d Monday of April next, then and there to answer unto Louis D. Gamache, Samuel Gamache, by his next friend, Louis D. Gamache, Leonore Gamache, by her next friend, Louis D. Gamache, Wilson Primm, Louis Primm, John Cavendar, and Jacob True, of an action of ejectment to the damage of plaintiffs five hundred dollars, and have you then there this writ.

Witness Wilson Prirum, clerk of the said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this 27th [SEAL.] day of March, in the year of our Lord eighteen hundred and forty-nine.

WILSON PRIRUM, *Clerk.*

Upon which the following return was endorsed, to wit:

Executed this writ in the county of St. Louis, on the twenty-seventh day of March, 1849, by reading it, and the declaration to François X. Piquignot, the within named defendant.

LOUIS T. LABEAUME, *Sheriff,*
By J. C. BROWN, *Deputy.*

And afterwards, to wit, on Monday, April 23, 1849, the following proceedings were had herein, to wit:

LOUIS D. GAMACHE, SAMUEL GAMACHE, LEONORE GAMACHE, WILSON PRIRUM, LOUIS PRIRUM, JOHN CAVENDER, and JACOB TRUE, vs. FRANCOIS X. PIQUIGNOT. } In ejectment.

Default.

The plaintiffs, Louis D. Gamache, Samuel Gamache, a minor under the age of twenty-one years, by his next friend Louis D. Gamache, Leonore Gamache, a minor under the age of twenty-one years, by her next friend Louis D. Gamache, Wilson Prirum, Louis Prirum, John Cavender, and Jacob True, by Holmes & Whittlesey, their attorneys, come, and the said defendant though demanded comes not, but makes default. Therefore it is considered by the court that the default of said defendant be entered; and the court, being fully advised in the premises, doth find that the said defendant is guilty of withholding from the plaintiffs the possession of "all that messuage, and tract of land situated in the county of St. Louis, and State of Missouri, the same being United States survey, No. 120, of the out lots and common fields of the town or Carondelet, as confirmed to John B. Gamache, sen'r, or his legal representatives, by the recorder of land titles, under the act of Congress of 1812 and 1824; and surveyed, under the authority of the United States, by the surveyor general of the United States, of Illinois and Missouri, bounded northerly by the common fields of the town of Carondelet, east by the Mississippi river, (leaving a two-path,) southwardly by an out lot, claimed by the legal representatives of Gabriel Constant (Lallmond,) sen'r, and westwardly by land formerly belonging to Antoine Reihl, as particularly described, and bounded, in the field notes of said United States survey, No. 120, on file in the surveyor general's office at St. Louis, containing two hundred and thirty-seven and thirty-hundredth acres more or less," in the manner and form as the said plaintiffs have complained against him. Therefore it is considered by the court that the said plaintiffs recover the possession of the above described property from the defendant, and that a writ of habere facias issue therefor. It is further ordered, that the plaintiffs recover of the said defendant their costs herein expended, and therefore have execution.

Agreement.

And afterwards, to wit, on the 26th day of March, 1849, the following agreement was filed, to wit:

Mem: Agreed.

1st. Piquignot to pay *the* up the cost.

2nd. The execution to be returned unexecuted by order of plaintiffs' attorneys.

3d. Application to be made to circuit court on Monday next, or

afterwards, to set aside the judgment, and if judge H. thinks he has power to set aside the same, because the re is error, otherwise then to be set aside.

4th. If set aside, plaintiff to have leave to amend his declaration, if necessary, and to have next friend appointed, and devisee of Jacob True substituted.

5th. Case to be continued to April term, and, if necessary, to next term after, if plaintiffs not ready.

6th. The derivative title of plaintiffs, from John B. Gamache, sen'r, to be admitted by defendant, and also his possession of that portion of these premises which he occupies, and defendant's derivative title from Carondelet admitted by plaintiffs.

In witness whereof, the said François X. Piquignot, defendant, and the plaintiffs in said suit by their attorney, have signed the points, this 17th November, 1849.

XAVIÉ PIQUIGNOT,
N. & S. A. HOLMES, *Att'ys for plfs.*

Executed in presence of—
DU BOUFFNY FREMAN.

And afterwards, on the 19th day of November, 1849, the following proceedings were had herein, to wit:

LOUIS D. GAMACHE, SAMUEL GAMACHE, LEONORE GAMACHE, WILSON PRIRUM, LOUIS PRIRUM, JOHN CAVENDER and JACOB TRUE,
vs.
FRANCOIS X. PIQUIGNOT. } Ejectment.

Default set aside.

By consent of parties, the judgment rendered in this case at the last term of this court is set aside; leave is given plaintiffs to amend their declaration, and to have next friend appointed for Leonore Gamache, one of the plaintiffs, at any time before the case is for trial; the death of Jacob True, one of the plaintiffs, is suggested, and Abby P. True, his devisee, is substituted as plaintiff in his stead, and case to be placed at the foot of the docket of the present term for trial.

And afterwards, to wit, on the 10th day of December, T. 1849, the following plea was filed herein, to wit:

In the St. Louis circuit court, November T. 1849.

GAMACHE and others
vs.
PIQUIGNOT.

Plea.

And now comes the defendant and defends the demands of the plaintiffs, by his attorney, R. M. Field.

And afterwards, to wit, on the 2d day of January, 1850, the following motion was filed herein, to wit:

In St. Louis circuit court, November term, 1849.

GAMACHE et al.
vs.
PIQUIGNOT.

Motion of people of Carondelet to be made defendants.

And now come the Inhabitants of the town of Carondelet, and suggested that Piquignot, the above named defendant, claims title to premises demanded in said action under them: Wherefore they move that they may be made co-defendants, with leave to plead to and defend said action, by their attorney, R. M. Field.

Upon which, January 2, 1850, the following proceedings were had herein, to wit:

LOUIS D. GAMACHE et al.
vs.
FRANCOIS X. PIQUIGNOT.

On motion of the Inhabitants of the town of Carondelet, by attorney, it is ordered they be made parties defendant; whereupon the said inhabitants filed their plea.

The following is the plea herein filed, January 2, 1850, to wit:

GAMACHE et al.
vs.
The INHABITANTS of the town of Carondelet,
co-defendants with Piquignot.

In St. Louis circuit court, November term, 1849.

And now come the Inhabitants of the town of Carondelet, and defend the demand of the plaintiffs, by their attorney, R. M. Field.

And afterwards, on the 18th day of February, 1852, the following proceedings were had herein, to wit:

Trial.

LOUIS D. GAMACHE et al.
vs.
FRANCOIS X. PIQUIGNOT et al.
Ejectment.

Now, at this day come said parties, by their respective attorneys, and therefore comes also a jury, to wit, E. A. Maddox, William Rumsey, James Smith, Lorenzo Stinson, H. Duncan, John Watson, F. Miller, John T. Stinson, Carter Moss, Rober Hyde, J. W. Mitchell, and N. Wyman, twelve good and lawful men, who being duly elected, tried, and sworn, well and truly to try the issue joined between said parties,

3113.

the trial of this cause progressed; but, not being finished, it is laid over until to-morrow.

And afterwards, on the 19th day of February, 1852, the following proceedings were had herein, to wit:

Trial progressed.

LOUIS D. GAMACHE and al.
vs.
F. X. PIQUIGNOT et al.

Now, at this day come again said parties, by their respective attorneys, and the jury empannelled and sworn herein, and therefore the trial of this cause progressed; but, not [being] finished, it is laid over until to-morrow.

And, on the 20th February, 1852, the following further proceedings were had herein, to wit:

LOUIS D. GAMACHE et al.
vs.
F. X. PIQUIGNOT et al.

Now, at this day come again said parties, by their attorneys, and also comes the jury empannelled and sworn herein, and the trial of this cause progressed; but, not being finished, it is laid over until Monday morning next.

And on Monday, the 23d February, 1852, the following further proceedings were had herein, to wit:

LOUIS D. GAMACHE et al.
vs.
F. X. PIQUIGNOT et al.
Trespass.

Now, at this [day] come again the said parties, by their respective attorneys, and also come the jury empannelled and sworn herein, and thereupon the trial of this cause progressed; but, not being finished, it is laid over until to-morrow.

And, on the 24th day of February, 1852, the following further proceedings were had herein, to wit:

LOUIS D. GAMACHE et al.
vs.
F. X. PIQUIGNOT et al.

Now, at this day come again the said parties, by their respective attorneys, and thereupon comes also the jury empannelled and sworn herein, and the trial of this cause progressed; and, being finished, the jurors aforesaid retire to consult of their verdict.

And, on the 27th day of February, 1852, the following further proceedings were had herein, to wit:

Louis D. Gamache, Samuel Gamache, Leonore Gamache, Wilson Prirum, Louis Prirum, John Cavender, Jacob True, and Abby True,
vs.
Francois X. Piquignot, and the Inhabitants of the town of Carondelet.
} Ejectment.

Verdict.

Now, at this day come again said parties, by their respective attorneys, and also comes the jury empannelled and sworn herein; and, the trial of this cause being finished, the jurors aforesaid, upon their oaths aforesaid, find the issue herein joined in favor of said defendants. It is, therefore, considered by the court that said plaintiffs take nothing by their suit in this behalf, and that the said defendants go hence without day, and recover of said plaintiffs their costs and charges herein expended, and have therefore execution.

And afterwards, on the 28th day of February, 1852, the following motion for a new trial was filed herein, to wit:

Motion for new trial.

Louis D. Gamache et al.
vs.
Francois X. Piquignot, and the Inhabitants of the town of Carondelet.

And now, at this day come the said plaintiffs, by their attorneys, N. & S. A. Holmes, and move the court here to set aside the verdict of the jury aforesaid, and grant them a new trial of the said cause for the following reasons, to wit:

1st. Because the court erred in excluding from the jury the documentary evidence of title, and other competent evidence and testimony offered by the plaintiffs.

2d. Because the court erred in refusing the instructions asked for by the plaintiffs, and not given.

3d. Because the court erred in giving instructions asked for by the defendants.

4th. Because the court erred in admitting evidence to the jury offered by the defendants, and objected to by the plaintiffs.

5th. Because the court erred in admitting evidence offered by the defendants to go to the jury, which was afterwards instructed out by the court.

6th. Because the court erred in instructing out evidence offered by the plaintiffs, and admitted to go to the jury without objections from the defendants.

7th. Because the said verdict was against law and the instructions of the court.

8th. Because the said verdict was against the evidence and the weight of the evidence.

9th. Because said verdict was against the law and the evidence.

N. & S. A. HOLMES, *Att'ys for Pl'ffs.*

And afterwards, on the 15th day of March, 1852, the following proceedings were had herein, to wit:

LOUIS D. GAMACHE et al.
vs.
F. X. PIQUIGNOT et al.

Motion overruled.

The court having duly heard and considered said plaintiffs' motion to set aside the judgment in this cause, and for a new trial hereof, it doth order that said motion be overruled.

And afterwards, on the 19th day of March, 1852, the following bill of exception[s] was filed herein in the words and figures following, to wit:

Bill of exceptions.

LOUIS D. GAMACHE et al.
vs.
FRANCOIS X. PIQUIGNOT and the Inhabitants of the town of Carondelet.

In the St. Louis circuit court, Nov. 7, 1851.

Be it remembered, that on the eighteenth day of February, 1852, the above entitled cause came on for trial in said court; and a jury being sworn, the plaintiffs read in evidence the act of Congress of 13th June, 1812, entitled "An act making further provision for settling the claims to land in the territory of Missouri," and the act of the 26th of May, 1824, entitled "An act supplementary to an act passed on the 13th June, 1812, entitled 'An act making further provisions for settling the claims to lands in territory of Missouri,'" which it is agreed may be read in evidence and referred to in the printed statutes at large of the United States.

Admission of possession.

It was admitted by the parties that all the title of John B. Gamache, sen., or his legal representatives, in and to the tract of land in said declaration described, was in the plaintiffs, as such representatives at the commencement of this suit; that lots Nos. 34 and 33, (except sixty-six feet in width, on the south side of said lot No. 33,) of Mackey's survey and subdivision No. (2), two of the commons of Carondelet, and containing about eighteen acres of land, are embraced within the tract of land in said declaration described; and that said defendant, Piquignot, was, at the commencement of this suit, in possession of said lots Nos. 33 and

34 of said Mackey's survey No. 2, holding the same under lease from the inhabitants of *of* the town of Carondelet.

Exhibit A.—Confirmation.

The plaintiffs then offered in evidence the following certificate of confirmation of the recorder of land titles of Missouri, as follows, to wit: (Endorsed on the outside "Jno. Bte. Gamache, sen., 6 by 40 arpens, field of Carondelet. Fees $1\frac{00}{100}$, paid.") John Baptiste De Gamache, sen., or his legal representatives, claims an out lot, adjoining the village of Carondelet, containing six arpens in front by forty in depth, bounded, northerly, by the common fields; eastwardly, by the Mississippi river (leaving a tow between it and the river;) south, by an out lot claimed by the legal representatives of Gabriel Constant, (lalmond,) sen., an[d] west by the land formerly the property of Antoine Riehl.

John Baptiste Maurice Chatillon, being duly sworn, says he knows the land claimed, and that he is about sixty-six years of age, and that he was born in Kaskaskia, and A. D. seventeen hundred and eighty-eight he removed from Ste. Genevieve to Carondelet, where he has resided ever since; that A. D. seventeen hundred and ninety-seven or ninety-eight he was employed by John Baptiste Gamache, sen., to fence in a field which said Gamache had been clearing, and working for about two years within this field lot; and he, this respondent, says he did fence in about three arpens of this land, and did build a cabin on the same at this time; and this deponent further says that Gamache did cultivate this same field for five or six years until his death; and this deponent further says he always understood this land was owned by said John Baptiste Gamache.

his
JOHN BAPTISTE MAURICE ⋈ CHATILLON,
mark.

Sworn to before me, July 6th, 1825.

THEODORE HUNT,
Recorder L. T.

Translated to witness. J. V. GARNIER.

RECORDER'S OFFICE,
ST. LOUIS, MISSOURI, 22*d January*, 1839.

I certify the foregoing within to be truly copied from book No. 2, page 46, of the minutes of the proceedings of the recorder of land titles in the State of Missouri, under the act of Congress of the 26th May, 1824, entitled "An act supplementary of an act passed on the 13th day of June, 1812," entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," all of record in this office, and confirmed by the act of 13th June, 1812, above cited.

F. R. CONWAY,
U. S. recorder of land titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. surveyor of public lands, St. Louis, Mo.

Together with a certified extract from the registry of certificates from the office of the recorder of land titles as follows, to wit:

Registry of certificates of confirmation on town lots, out lots, and common field lots, issued by the recorder of land titles.

In whose name issued.	Date.	Situation.	Remarks.	Quantity.
The following claim was omitted by Mr. Hunt, late recorder, in furnishing the list of claims proven up before him, to wit: John Baptiste de Gamache.	6th July, 1825.	Carondelet fields.	Bounded north by the common fields, eastwardly by the Mississippi, (leaving a tow[path] between it and the river,) south by an out lot claimed by the legal representatives of Gabriel Constant, (lalmond,) sen., and westwardly by the land formerly the property of Antoine Rheil.	

The above claim entered by me in the book, 12th March, 1839, having this day furnished the surveyor general with a description thereof.

F. R. CONWAY, *Recorder.*

RECORDER'S OFFICE, ST. LOUIS,
January 23*d*, 1851.

The above is correctly copied from the registry on file in this office.

ADOLPH RENARD,
U. S. recorder of land titles in the State of Missouri.

And also a certified extract from the list of claims proved before the recorder of land titles, under the act of 26th of May, 1824, (in which is contained the Gamache claim to which particular reference was made at this stage of the case,) transmitted by the recorder of land titles to the surveyor general of the United States in Illinois and Missouri, certified from the office of the surveyor general as follows, to wit:

(1.)

Exhibit C.

No. 1.—Not in list.

Antoine Govereau's legal representatives claim a lot in the village of Mine-a-Burton containing about 73 feet front by about 150 feet

deep, bounded N. E. by Mine-a-Burton creek, S. E. by a formerly claimed by Porter, dit Polite Robert, S. E. by Mine-a-Burton street, and N. W. by a part of same lot, but now owned by widow Baldwin. This lot was proven the 7th May, 1825. See book No. 1, page 149.

No. 2—No. 553 of list, survey No. 27, Mine-a-Burton.

Antoine Govereau's legal representatives claim a lot in the village of Mine-a-Burton containing 90 front by about 150 feet deep, bounded N. E. by Mine-a-Burton creek, S. E. by a lot of Seraphin, S. W. by Main street, and N. W. by Antoine Govereau's legal representatives. This lot was proven 15th July, 1825. See book No. 2, page 74.

No. 3—No. 553 of list, survey No. 49, Mine-a-Burton.

The lot adjoining the village of Mine-a-Burton, proven in the name of Louis Millehome's legal representatives as being bounded N. E. by vacant land claimed by Louis Millehome's legal representatives, S. E. by the lot claimed by Peter Hebert, S. W. by High street, and N. W. by Peter Martin's legal representatives, is 2½ arpens in front by 2½ arpens deep; and not 360 feet front by about 100 feet deep, as stated in the description heretofore furnished your office.

No. 4—No. 564 of list, survey No. 56, Mine-a-Beton.

And the lot in the village of Mine-a-Burton proven in the name of Louis Millehome's legal representatives as being bounded N. E. by High street, S. E. by a lot claimed by Peter Hebert, S. W. by Mine-a-Burton creek, and N. W. by the lot of Peter Martin, is about 2½ arpens in front by about 100 feet deep and not 2½ deep, as stated in my former report. There were errors in transcribing the former report from the books in my office.

(Signed) THEODORE HUNT.

To Col. Wm. McRae,
Surveyor general of the State of Illinois and Missouri.

Recorder's office, St. Louis, July 6, 1829.

(2.)

No. 5—No. 1,080 of list, survey No. 297, St. Louis.

Office of the Recorder of Land Titles,
St. Louis, 12th April, 1830.

To Wm. McRae, Esq.,
Surveyor of U. S. lands in Illinois, Missouri and Arkansas.

Sir: The lot in the town of St. Louis, of 33 front by 150 feet deep, in the name of Alexis Picard's legal representatives, proven before me on the 22d November, 1825, under the act of Congress approved the 26th May, 1824, and which is contained in my list of claims proven under the aforesaid act, and certified to your office on the 15th October, 1827,

3116

is situate in block or square numbered 87, and is bounded on the N. by the lot proven by Pelagier Prinns, claiming under Pierre Bissonette on the 25th April, 1825.

(Signed) THEODORE HUNT.

No. 6—No. 415 in list, survey No. 165, St. Louis.

Also the lot in the town of St. Louis of 63 feet front by 150 feet deep, in the name of Michael Ralette, proven the 26th of May, 1825, under the aforesaid act of Congress, is bounded on the east by Main street and west by part of same square, and not "west by Main street and east by part of same square," as stated in my list certified as aforesaid to your office on the 15th of October, 1827.

(Signed) THEODORE HUNT.

12th April, 1830.

No. 7—No. 549 of list, survey No. 2, Mine-a-Burton.

The lot of Joseph Brown, under Moses Austin, as originally proven before me, and as described in the list of confirmations heretofore furnished to your office, contains about 62 feet front by 60 feet deep, and is bounded as follows, viz: N. W. by Austin survey, S. E. by Chadbournce, and S. W. by High street, according to the explanatory testimony; this lot of Joseph Brown, under Moses Austin, is part of a lot which Moses Austin bought of a man named Dupont, and that at the time it was sold to Austin by Dupont, it (that is the whole lot) was bounded on the N. W. by Moses Austin's large survey. The said lot extending on both sides of what is now a street, (then a road,) so as to include the lot at present claimed [by] Moses Austin's legal representatives, by one hundred and forty feet front by one hundred and fifty feet deep, as well as the lot of Joseph Brown.

(3.)

No. 8—No. 536 of list, survey No. 19, Mine-a-Burton.

The lot of about 200 feet front by 100 feet deep, proven by Louis Roberage's legal Rep's, calls for being bounded on N. W. by the lot just proven by Bruffy, in the lot of 140 feet front by about 150 feet deep, proven in the name of Moses Austin's legal rep's. The said lot, proven by Robergie's legal Rep's, also calls for being bounded on the S. E. by a lot formerly owned by Chabet; this lot, formerly owned by Chabet, is that of 150 feet front by about 150 feet deep, proven by John T. McNeal's Rep's; so says the explanatory testimony.

No. 9—No. 303 of list, survey No. 17, Mine-a-Beton.

The lot of John T. McNeal's reps., proven to contain 150 feet front by about 150 feet deep, bounded on the N. W. by the lot of about 200 feet front by 100 feet deep, proven by Louis Roberge's legal reps., is S. E. by the lot of 150 feet front by about 150 feet deep, proven by

Bazilt Valle's legal reps.; the other boundaries as described in the list heretofore furnished.

No. 10—No. 294 of list, survey No. 9, Mine-a-Burton.

The lot of 180 feet front by about 150 feet deep, proven by John T. McNeal's legal reps., is bounded on the S. E. by the lot of 150 feet front by 150 feet deep, proven by Bazil Valle's legal reps., that being the same lot of Depester & Derninn, called for on the list heretofore furnished.

No. 11—No. 546 of list, survey No. 7, Mine-a-Breton.

The lot of 150 feet front by 150 feet deep, proven by Louis Millehome's legal reps., calls for being bounded on N. W. by a lot formerly owned by Govereau. This "lot formerly owned by Govereau," which bounds the above-named lot of Millehome's legal reps. on the N. W., is the lot of 150 feet front by 150 feet deep, proven by Brazil Valle's legal reps.; (so says the explanatory testimony.) Valle bought it, Govereau having lived on said lot before.

No. 12—No. 304 of list, sur. No. 6, Mine-a-Burton.

It appears from the explanatory testimony that the lot of about 100 feet front deep, proven by Manuel Blanco's legal reps.;

[No. 13—No. 548 of list, survey No. 9.]

and the lot of 100 feet front by 150 feet deep, proven by Wm. M. and J. John Perry, claiming under Baptiste Labache, were formerly one and the same lot, of —— feet front, owned by Blanco, and that, before the change of government from France to the United States, Labrache had purchased 100 feet front from the S. E. side of the said lot of Blanco; and the witness, in proving the S. E. boundary of the lot of Blanco, had reference to the entire lot, including the part claimed by Labreche;

[No. 14—No. 569 of list, survey No. 10, Mine-a-Beton.]

and the witness, in proving the N. W. boundary of the lot of 350 feet front by 700 feet deep, claimed by Joseph Ducelles' legal reps., in calling for Manuel Blanco's legal reps., as being the N. W. boundary thereof referred to, the said lot as originally held by Blanco, regard to the claim of Labreche.

(4.) No. 15—No 556 of list, survey No. 46, Mine-a-Beton.

Therefore the aforesaid lot of about 150 feet front by 150 feet deep, proven by Manuel Blanco's legal reps., is bounded on S. E. by the lot of 100 feet front by 150 feet deep, proven by Wm. M. & John Perry, under Labrache; and the lot of 350 feet front by 700 feet deep, proven by Joseph Ducelles' legal reps., is bounded on the N. W. by

the aforesaid lot, proven as Wm. M. & John Perry's, under Baptiste Labrache, of 150 feet front by 150 feet deep.

Recorder's office, St. Louis, June 30, 1829.

(Signed) THEODORE HUNT, *Recorder L. Titles.*

To WM. MCREE, Surveyor of U. S. lands in Illinois, Missouri, and Arkansas.

RECORDER'S OFFICE, ST. LOUIS,
July 17th, 1828.

DEAR SIR: I will thank you if you will correct an error in my report to your office under the law of 26th May, 1824. [No. 16—No. 209 of list surveyor No. 209, Mine-a-Beton.] It is the claim of a lot in St. Louis belong[ing] to Baptiste Durinne, proven the *the* 15th April, 1825. It contains 60 feet fronting on Church street, instead of 120 feet, and is bounded by part of same square on the south, instead of being bounded by a lot claimed by the heirs of Dodier.

I remain, with great respect, yours, &c.,

(Signed) THEODORE HUNT.

Col. WM. MCREE, Surveyor General of Illinois, Missouri, and Arkansas.

No. 17—Not in list.

John Baptiste de Gamache, sen'r, or his legal reps., claim an out lot adjoining the village of Carondelet, containing six arpens in front by 40 in depth, bounded northerly by the common, eastwardly by the Mississippi, (leaving a tow between it and the river,) south by an out lot claimed by the legal reps. of Gabriel Constant, (Lalamand) sen'r, and west by the land formerly the property of Antoine Rheil.

John Baptiste Maurice Chatillon, being duly sworn, says he knows the land claimed, and that he is about 66 years of age, and that he was born in Kaskaskia, and A. D. 1788 he removed from St. Genevieve to Carondelet, where he has resided ever since; that A. D. seventeen hundred ninety-seven or ninety (8) eight he was employed by John Baptiste Gamache, sen'r, to fence in a field—which said Gamache had been clearing and working in for about two years within this field lot—and he, this deponent, says he did fence about 3 arpens of this land, and build a cabin on the same, at this time. And this deponent further says, that Gamache did cultivate this same field for 5 or six years, until his death. And this deponent further says, he always understood this land was owned by said John Baptiste Gamache.

(Signed) JOHN BAPTISTE MAURICE his ✕ mark. CHATILLON.

Sworn to before me, July 6th, 1825.

(Signed) THEODORE HUNT, *Rec'r L. T.*

Translated to witness by J. V. Garnier.

RECORDER'S OFFICE, ST. LOUIS, MO.,
12th March, 1839.

I certify the foregoing to be truly copied from book No. 2, page 46, of the minutes of the proceedings of the recorder of land titles in the State of Missouri, under the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the 13th June, 1812, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri,'" and that the said tract of land within mentioned is duly confirmed by the first section of the act above mentioned, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," approved the 13th June, 1812, a description of which, it seems, was *admitted* to be furnished to that office by my predecessor, Theodore Hunt, esq.

(Signed) F. R. CONWAY,
U. S. recorder of land titles in the State of Missouri.

To DANIEL DUNKLIN, esq.,
U. S. surveyor of public lands, St. Louis, Missouri.

(6.)

OFFICE OF THE SURVEYOR GENERAL, ILLINOIS AND MISSOURI, SAINT LOUIS, 9th April, 1850.

I hereby certify, that the foregoing on page (1) to (6) inclusive, with the exception of writing in red and black ink in the margins thereof, is a full and correct copy of communications addressed to Wm. McKee and Daniel Dunklin, surveyor general, by Theodore Hunt and F. R. Conway, recorders of land titles in the State of Missouri, since the 15th October, 1827, the day on which the said Theodore Hunt returned to this office pursuant to the 3d section of the act of Congress, of 26th March, 1824, entitled "An act supplementary of an act passed on the 13th day of June, eighteen hundred and twelve, entitled 'An act making further provisions for settling the claims to land in the territory of Missouri,'" the list on file therein purporting to be a list of the town and village lots, and out lots, and common field lots in the towns and villages in Missouri mentioned in said act, the boundaries of which had been proved before him pursuant to the first section thereof. The claims in the foregoing copy, numbered 1, in the name of Antoine Goverau's legal representatives, and 17, in the name of John B. Gamache's legal representatives, are not embraced in Recorder Hunt's list of 15th October, 1827. The claims under No. 2 to 16 are included in the said list, and the communications referring to them appear to be explanatory of the date in relation thereto as given in the said original list. The "number of list" in margin of the foregoing copy corresponds to the numbers attached to duplicate list furnished by said Hunt to the commissioners of the general land office, as returned to this office by said commissioners on 12th February, 1849, and the marginal notes show the number of each survey claims under

Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15, are to lots in the village of Mine-a-Burton, which have been surveyed, and finally approved, and the plats and descriptions of which have been returned to the recorder of land titles according to law for his action thereon. Claims under Nos. 5, 6, and 16, are to lots in the city of St. Louis, which have been surveyed, but are not yet finally acted upon by this office. No. 17 is a claim to an out lot of the village of Carondelet which has been surveyed, [7,] but from its interference with a number of claims in the village of Carondelet, the surveys of which have been made and finally approved, (but not returned to the recorder of land titles,) this survey has not yet been acted upon by the surveyor general, nor finally approved. The originals of the above copies are attached by wafers to Recorder Hunt's list after his certificate and signature thereto.

(Signed) M. LEWIS CLARK,
Surveyor general.

NOTE.—The above certificate is a true copy of the one which was affixed to a copy of the above "papers attached to Hunt's" list furnished to N. and S. A. Holmes, according to their request of the 4th April, 1850.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, ST. LOUIS, Dec. 31, 1850.

I hereby certify, that the foregoing on pages 1 to 5 inclusive, with the exception of the writing with red ink on the margin thereof, *in* a full and correct copy of communications addressed to W. M. McRee and Daniel Dunklin, surveyor general, by Theodore Hunt and F. R. Conway, recorder of land titles in the State of Missouri, since the 15th October, 1827, as is more fully set forth and explained in a certificate appended to a copy of the same furnished N. & L. A. Holmes on the 9th April, 1850, which said certificate and explanation, for the sake of brevity, are hereby adopted and made a part of this, and are truly copied on pages 6 and 7 of this document.

M. LOUIS CLARK, *Surveyor general.*

Bill of exceptions continued.

To the admission of which three documents thus offered, together or either of them, the defendant objected, and the same were all and each of them excluded by the court, and the plaintiffs excepted.

The plaintiffs then offered in evidence the certificate of *of* confirmation aforesaid alone, to which the defendants objected. Their objection was sustained, and the plaintiffs excepted.

The plaintiffs then offered in evidence a certified copy of Hunt's minutes of the proof taken by the recorder of land titles under the act of Congress of the 26th of May, 1824, in relation to the claim of the legal representatives of John B. Gamache, sen'r, as follows, to wit:

Exhibit A—Hunt's minutes of testimony attached to W. Moss's deposition.

Testimony relating to town and village lots, out lots, and common field lots, in, adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robbert, Carondelet, St. Genevieve, New Madrid, New Burboun, Little Prairie, and Mine-a-Burton, in Missouri, and the village of Arkansas, in the territory of Arkansas, as directed by an act of Congress, passed May 26th, 1824.

THEODORE HUNT,
Recorder of land titles.

Hunt's minutes—Book I, p. 1.

["To be read, all the rest is excluded."]

John Baptiste de Gamache, sen'r, or his legal representatives, claim an out lot adjoining the village of Carondelet, containing six arpens in front by forty in depth, bounded northerly by the common field, eastwardly by the Mississippi, (leaving a tow-path between it and the river,) south by an out lot claimed by the legal representatives of Gabriel Constant, (Lalmand,) sen'r, and west by the land formerly the property of Antoine Rheil.

Jean Baptiste Maurice Chatillon, being duly sworn, says he knows the land claimed, and that he is about sixty-six years of age, and that he was born in Kaskaskia, *and* A. D. seventeen hundred and eighty-eight he removed from St. Genevieve to Carondelet, where he has resided ever since; that A. D. seventeen hundred and ninety-seven or eight, he was employed by Jean Baptiste Gamache, senior, to fence in a field which said Gamache had been clearing and working for about two years within this field lot. And the deponent says he did fence in about three arpens of this land, and built a cabin on the same at this time. And this defendant further says, that Gamache did cultivate this same field for five or six years, until his death. And this defendant further says, he always understood this land was owned by Jean Baptiste Gamache.

JEAN BAPTISTE MAURICE his ⋈ mark. CHATILLON.

Sworn to before me, July 6, 1825.

THEODORE HUNT,
Recorder L. T.

Translated to within by J. V. Garnier.

Hunt's minutes—Book No. 2, p. 46.

Jean Baptiste Dauphin being duly sworn, as related to the claim of John B. Gamache, sen'r, (see page 46,) says he knows the claim, and

that upwards of thirty years ago there was between two and three arpens of this land fenced in and cultivated by John Baptiste Gamache, sen'r, who had a small house on the same in which Gamache used to hang his tobacco, &c. And this deponent further says, that Gamache continued to work the same for several years after this time, say until he, the deponent, removed to Portage des Sioux twenty three years ago.

his
JOHN BAPTISTE ⋈ DAUPHIN.
mark.

Sworn to before me, July 8, 1825.

THEODORE HUNT,
Recorder L. T.

Hunt's minutes, No. 2, p. 53.

RECORDER'S OFFICE, SAINT LOUIS,
18th September, 1851.

I certify the foregoing to be correctly transcribed from the book in this office containing the testimony taken by the recorder of land titles in Missouri, Theodore Hunt, pursuant to the first section of the act of Congress of 26th May, 1824, supplementary to the act of 13th June, 1812, entitled "An act making further provisions for settling the claims to lands in the Territory of Missouri."

ADOLPH RENARD,
U. S. recorder of land titles in the State of Mo.

To the admission of which the defendants objected. Their objection was sustained, and the same was excluded from the jury by the court, except for the purpose of showing the fact that claim was made by the legal representatives of John B. Gamache, sen., before the recorder of land titles on the sixth day of July, 1825; to which exclusion thereof, and limitation of the effect of said evidence, the plaintiffs excepted.

It was admitted by the defendants that there were no other records of proceedings in relation to claims under said act of Congress of 26th May, 1824, in the office of the recorder of land titles in Missouri, than the books of Hunt's minutes, and the registry of certificates above mentioned.

The plaintiffs then offered in evidence all the above mentioned documents together, to which the defendants objected; and their objection was sustained, and the plaintiffs excepted.

The plaintiffs then offered and read in evidence the deposition of William Moss, as follows, to wit:

Deposition of William Moss.

Deposition of William Moss, produced, sworn, and examined at the house of Mark Moss, near Sandy creek, in the county of Jefferson, and State of Missouri, before me, Thomas C. Fletcher, clerk of the circuit court within and for said county of Jefferson, for the purpose of

perpetuating the testimony of said witness respecting the claims of John Baptiste de Gamache, sen., or his legal representatives, to an out lot of the village of Carondelet; taken in pursuance of commission issued out of the office of the clerk of the circuit court of St. Louis county, State of Missouri, upon the petition of Samuel Gamache, by his guardian Louis D. Gamache, Francis de Sirle and Leonore his wife, John Cavender, Abby P. True, Louis Prirum, Charles C. Whittlesey, Charles Holmes, Henry Senter, Nathaniel Holmes, and Samuel A. Holmes, on the part of the plaintiffs.

William Moss, of lawful age, being produced, sworn, and examined, deposeth and saith:

Question 1st, by plaintiffs. Where do you reside?

Answer. Near Sandy creek, in Jefferson county, State of Missouri, about thirty miles distant from the city of St. Louis.

Question 2d, by plaintiffs. What is your age?

Answer. I am in the eighty-seventh year of my age; I was [born] at four o'clock in the morning of the fourth day of April, A. D. seventeen hundred and sixty-four.

Question 3d, by plaintiffs. What is your state of health?

Answer. There is nothing the matter with me with the exception of old age; I eat well, sleep well; my hearing is good, my eye-sight is good; I can see a pig a mile on the top of the mountains.

Question 4th, by plaintiffs. How is your memory?

Answer. I have lost none of it; my memory is as good as ever it was.

Question 5th, by plaintiffs. Can you travel far from home?

Answer. I can only travel in some kind of vehicle; I have not been on horseback for ten years; I walk with canes.

Question 6th, by plaintiffs. When did you come to this country?

Answer. I came to Upper Louisiana in the year seventeen hundred and ninety-six.

Question 7th, by plaintiffs. To which part of Upper Louisiana did you come?

Answer. I first landed at Cape Gerardeau, and was at St. Louis and Vide Pouche (now Carondelet) in the same year.

Question 8th, by plaintiffs. Did you know John Baptiste Gamache, senior?

Answer. I knew a man at Vide Pouche by the name of John Baptiste Gamache; he lived there, and was an inhabitant of the village, and said he came from Montreal.

Question 9th, by plaintiffs. How long did you know him, and when did he die?

Answer. I knew him about nine years; I think he died about the year eighteen hundred and five, after the Americans took possession of Upper Louisiana.

Question 10th, by plaintiffs. Do you know how many children he left?

Answer. I do not; I did not know any of his children; I knew his

grand-children, or persons who said they were his grand-children; I knew nothing about his children.

Question 11th, by plaintiffs. Did you know of his claiming and cultivating an out lot adjoining the village of Carondelet?

Answer. I do.

Question 12th, by plaintiffs. How long did he cultivate it?

Answer. It had been or was under cultivation for several years when I first saw it in the year seventeen hundred and ninety-six, and he continued to cultivate it down to the time of his death.

Question 13th, by plaintiffs. What did he raise on it?

Answer. He raised wheat, tobacco, and corn.

Question 14th, by plaintiffs. How large was the lot he claimed?

Answer. He claimed a pretty large tract, which lay south of all the other cultivated tracts; he claimed a considerable tract, and had of it in actual cultivation about eight or ten acres.

Question 15th, by plaintiffs. How many arpens fronting on the river did he claim?

Answer. He offered to sell it to me, and I think he told me it was four arpens front on the river, running back forty arpens; I know it was four arpens front, running back forty arpens, that he offered to sell to me.

Question 16th, by plaintiffs. State whether he took you over the tract, and showed [it] to you?

Answer. He did; he showed me particularly the part in cultivation, and from the top of the hill showed me where the western, the northern, and the eastern boundaries of his tract were, by pointing to them, and told me whose tract adjoined his on the north.

Question 17th, by plaintiffs. Whose claim lay to the west end of Gamache's claim, and who cultivated to the west of him?

Answer. I knew of no claim to the west, and *of it* think his claim extended a little across the road; the road lay at the back of the fields; it was Catalant's road.

Question 18th, by plaintiffs. Do you recollect of Anctione Rheil claiming and cultivating a tract to the west of the road spoken of?

Answer. I knew Rheil well; I knew his claim of land on the west of the road; it lay to the west of the Gamache claim.

The paper hereto attached, marked (A,) was read to the witness, and the following questions asked him:

Question 19th, by plaintiffs. Is the claim spoken of in that paper the same tract of which you have been speaking?

Which question is objected to by the counsel for the city of Carondelet, also by Messrs. Edward Haven, Louis G. Picot, for himself, and as attorney for Marie Pomrul Coteaunts, and John Reggin; also by Henry T. Blow and Julien Gamache, and R. E. Botton, Henry Von Phul, Samuel H. Lawery, and J. D. Hooserran.

Answer. I understand it to be the same tract.

Question 20th, by plaintiffs. What was the east boundary of Gamache's claim?

Answer. He told me he run right to the river.

Question 21st, by plaintiffs. State if Gamache's claim was the lowest one of the cultivated fields.

Answer. It was; and all the other fields lay north of it.

Question 22d, by plaintiffs. Did Gamache have any cabin or other building on the land?

Answer. He had a tobacco house upon the hill upon the land. He had his dwelling-house down in the city.

Question 23d, by plaintiffs. Was there any town on or below the tract of Gamache?

Answer. Not one house, except old man Gravois'; every bit of the town lay to the north of it.

Question 24th, by plaintiff. State, if you know, whether it was the habit of the owners of cultivated fields, back of the town, to cultivate the whole of their tract, or only portions of them, each year.

Answer. I am very well acquainted with their habits and customs, about the cultivation of their lands; it was their habit to cultivate only part of their lands; their lands were all inclosed in one common field; and they all went in at a great gate, and each one went to his own spot, and cultivated so much as he wanted.

Question 25th, by plaintiffs. Did you ever know or hear, during the lifetime of John B. Gamache, sen'r, that the inhabitants of the village of Carondelet interfered with the cultivation of Gamache on this lot, or attempted to drive him off this claim?

Answer. They never did to my knowledge; I think not; he was a man much respected among them.

Cross examined.

Question 1st. By R. M. Field, counsel for the city of Carondelet. Was the lot above spoken of part of the common field?

Answer. It was; it was inside of the field, that is where he raised his tobacco.

Question 2nd, by same. Whose common field lot bounded Gamache on the north?

Answer. Madam Consta's bounded it on the north; I saw Madam Consta's hands at work on the lot north of Gamache's.

Question 3d, by same. Was the dwelling-house of Gamache on the east end of the tract claimed by him?

Answer. I say it was.

Question 4th, by same. Was that the house in which he lived and died?

Answer. It was.

Question 5th, by same. Was that house beside the elm tree?

Answer. It was; some of the limbs of the elm tree lapped over the house and shaded it.

Question 6th, by same. Was the elm tree spoken of the same elm tree which stands beside a stone house on Main street in Carondelet?

Answer. It is; I have known it for fifty odd years.

Question 7th, by same. How far was the north line of Gamache's tract from his dwelling-house?

Answer. I can't tell how far it was, but it was not very far.

Question 8th, by same. Did the principal street of the village run near Gamache's house?

Answer. It ran within a few yards, close, right by it.

Question 9th, by same. Where did Capt. Louis Courtais live?

Answer. He lived right on the river bank below Gamache's, between Gamache's and the river.

Question 10, by same. Where did Charles Robere live?

Answer. He lived adjoining Capt. Courtais.

Question 11, by same. Do you remember, that from the principal street below Gamache's house there were streets or pass-ways leading to the river?

Answer. If there was, I knew nothing about them.

Question 12, by same. Do you know that the people of Carondelet claimed [the] commons south of the common fields?

Answer. They did claim [the] commons there from Gamache's fence down to the Des Peres, and all down in that bottom.

Question 13, by same. Did they claim [the] commons south of the river Des Peres?

Answer. They did; they claimed to the Cave springs, nine miles.

Question 14th, by same. Do you know anything of a line of blazed trees south of the river Des Peres?

Answer. I know the line of blazed trees, and where it crosses the road coming this way.

Question 15th, by the same. Did that blazed line exist before the change of government?

Answer. It was there before the change of government.

Question 16th, by the same. Do you know of a survey of the west line of the commons to the river Des Peres by Soulard?

Answer. I know the line; I *seed* Soulard running of it.

Question 17th, by same. Where did Soulard commence his survey?

Answer. He commenced at the south corner of the Vide Pouche fields.

Question 18th, by same. When Gamache offered to sell you four arpens front by forty deep, did you understand that to be all his claim?

Answer. I did not know any other; he told me he wanted to sell his land, he wanted to go to Montreal.

Cross examination continued by Mr. Louis G. Picot.

Question 1st. Did you know a man by the name of Gravois living in the village of Vide Pouche?

Answer. I did; he lived in Vide Pouche; he lived in a very small hut just sufficient to shelter him, and hardly that; it was covered with bark.

Question 2d, by same. How far was the hut of Gravois from Gamache's house?

Answer. Three hundred yards, or maybe a little more.

Question 3d, by same. What direction was it from Gamache's to the hut of Gravois?

Answer. He lived down the river on the main road which runs through the village.

Question 4th, by same. Was there any other house below Gamache's?

Answer. There was none except Gravois'.

Question 5th, by same. How far south from the present location of the Catholic church was Gravois' hut?

Answer. About two hundred yards; Gravois' house was within Gamache's line, as Gamache told me.

Question 6th, by same. When Soulard commenced his survey, did he begin inside of Gamache's lot or south of it?

Answer. He commenced south of it, outside of Gamache's lot; I was not within a hundred yards of where he began; I was not there when he began.

Question 7th, by same. Within what distance to the river did the common field fence which included Gamache's lot approach?

Answer. The front fence was about half a mile from the river. The Catholic church is nearer to the river than the front fence was. There was no Catholic church there in Spanish times. About sixteen years ago I traveled along on the level ground upon the top of the hill, and saw workmen hewing timber; they told me they were building a church there. I also saw a pretty stout bell hanging on a pole, which I judged to be a church bell; there were no houses between the spot where they were at work and the river.

Question 8th, by same. From the spot where the workmen were building the church in what direction was Gamache's lot; was it further from the river?

Answer. The church was nearer than where Gamache raised his tobacco.

Cross examination closed.

Re-examination.

Question 1st, by plaintiff. Did the claim of Gamache lay above or below the church above mentioned?

Answer. The church lay to the north of Gamache's claim.

Question 2d, by same. According to the best of your recollection, does the plat here shown to the witness, marked (B), and annexed to this deposition, show the true location of the Gamache claim in reference to the other common fields and the river?

Which question is objected to.

Answer. Yes, there is no doubt of it; the upper part of it comes to the eddy, the way he showed to me.

Question 3d, by same. Where did the house and elm tree in which Mr Gamache lived stand?

Answer. His house was near the north line of his claim.

Question 4th, by same. Is that house and tree still standing?

Answer. They were standing eight years ago when I passed there. I stopped there and drank grog with Doctor Ecleberger under the elm tree, which is opposite Louis Guion's.

And further deponent saith not.

(Signed) WM. MOSS.

Exhibit A, annexed to above deposition.

Hunt's minutes.—Exhibit A.

Testimony relating to town and village lots, out lots, and common field lots, in, adjoining, or belonging to the several towns or villages of Portage des Sivoux, (Sioux,) St. Charles, St. Louis, St. Ferdinand, Villa-a-Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine-a-Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by act of Congress, proved May 26, 1824.

THEODORE HUNT,
Recorder of land titles.

Hunt's minutes—Book No. 1, p. 1.

John Baptiste de Gamache, senior, or his legal representatives, claim an out lot adjoining the village of Carondelet, containing six arpens in front by forty in depth, bounded northerly by the common field, eastwardly by the Mississippi, (leaving a tow between it and river,) south by an out lot claimed by the legal representatives of Gabriel Constant, (lalamand,) senior, and west by the land formerly the property of Antoine Rheil.

John Baptiste Maurice Chatillon, being duly sworn, says he knows the land claimed, and that he is about sixty-six years of age, and that he was born in Kaskaskia, and A. D. seventeen hundred and eighty-eight he removed from Ste. Genevieve to Carondelet, where he has resided ever since; that A. D. seventeen hundred and ninety-seven or eight he was employed by Jean Baptiste Gamache, senior, to fence in a field which said Gamache had been clearing and working for about two years within this field lot, and he, this deponent, says he did fence in about three arpens of this land, and built a cabin on the same at this time; and this deponent further says that Gamache did cultivate this same field for five or six years until his death; and this deponent further says he always understood this land was owned by said Jean Baptiste Gamache.

his
JEAN BAPTISTE MAURICE ✕ CHATILLON.
mark.

Sworn to before me, July 6th, 1825.

THEODORE HUNT,
Recorder L. T.

Translated to witness by J. V. Garnier.

Hunt's minutes—Book No. 2, p. 46.

Jean Baptiste Dauphin, being duly sworn as relates to the claim of John B. Gamache, sen., (see page 46,) says he knows the claim, and that upwards of thirty years ago there was between two and three arpens of this land fenced in and cultivated by John Baptiste Gamache, senior, who had a small house on the same in which Gamache used to hang his tobacco, &c.; and this deponent further says that Gamache continued to work the same for several years after this time; says until he, this deponent, removed to Portage des Sioux, about twenty-three years ago.

his
JOHN BAPT. ⋈ DAUPHIN,
mark.

Sworn to before me, July 8, 1825.

THEODORE HUNT,
Recorder L. T.

Hunt's minutes—No. 2, p. 53.

RECORDER'S OFFICE, ST. LOUIS,
18*th September*, 1851.

I certify that the foregoing is correctly transcribed from the books in this office containing the testimony taken by the recorder of land titles in Missouri, Theodore Hunt, pursuant to the first section of an act of Congress of the 26th May, 1824, supplementary to the act of 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri."

ADOLPH RENARD,
U. S. recorder of land titles in the State of Missouri.

(The following plat is exhibit (B,) annexed to above deposition:)

[For plat see original, page 38.]

Bill of exception continued—M. L. Clark's testimony.

The plaintiffs then called as a witness M. L. Clark, who testified that he was surveyor general for Illinois and Missouri. He produced from the office of the surveyor general a book which he testifies is the book of Joseph C. Brown's returns to that office of the descriptions and plats of his surveys of the town lots, out lots, and common field lots of the village of Carondelet, confirmed by act of Congress of 13th June,

1812, executed under instructions from the surveyor general dated 15th March, 1839, which book of returns he says is a part of the record files of this office, and he turns to the plat contained in said book, entitled a connected plat of the common fields of Carondelet; and at the same time the copy of said plat, which is attached to the deposition of William Moss, and referred to in his testimony, as above copied and set forth, is shown to the witness, and he testifies that the said copy of said connected plat is a true and exact copy of the original plat in said book before him, and of the approval of Surveyor General Milburn therein, as the same appears in said book at the foot of said plat, except the small letters a, b, c, e, f, which were put in said copy for the purpose of reference in his certificate on the back thereof, and to explain his said certificate, the said letters not being on the original plat in said book; that the plat shown him is a true copy of that page in said book; the book is one of the books of my office.

Cross examined.

Question by defendants' counsel. What is the meaning and effect of that approval of General Milburn on that plat?

Objected to by plaintiffs, and objection sustained, and exception taken by defendants.

The defendants' counsel then wrote out his questions and his exceptions, as follows. But the witness was allowed to state the course of practice in his office in regard to making, approving, and recording surveys. The witness then stated the purpose of such approval as that on said plat is to show that the work has been correctly executed by the deputy surveyor according to his instructions, so that he can be paid for his work, or the deputy cannot be paid for his work by the regulations of the office prescribed by the commission of the General Land Office until his surveys have been so approved. Instructions are given to the deputy; and when his surveys have been made, and descriptions of field notes and plats returned and made out, they are examined, and if found to have been correctly done according to instructions they are then approved in this manner, and the work paid for. If not correctly done they are not approved and paid for; then the said surveys are held up in the office for further examination as to the location and conflict with other surveys. If the location is a matter of doubt, then the survey is looked over again by the examining clerk, and, if found to be rightly located, the plat and description is copied into the record book, and the same is then signed and dated by the surveyor general; it is then considered as finally acted upon and recorded. This is according to my opinion. The book of Brown's returns aforesaid is not the record book, but a book on file in my office. The record book is a book into which the plats and descriptions are finally copied and recorded. I have refused to record this survey No. 120 of the Gamache claim, on application of the claimants, and an appeal has been taken to the commissioner of the General Land Office;

and the same is still pending, I believe, before the Secretary of the Interior.

Re-examined.

The reasons why I refused to record said survey No. 120, and to consider it as finally approved, were:

1st. That on page 265 of the same book of Brown's Surveys is another plat, by which it appears that this survey No. 120 of the Gamache claim interferes with and covers thirteen squares of Brown's survey of the town of Carondelet, made at the same time and under the same instructions, and that it also conflicts with six surveys of private claims to town lots; which survey had been approved and recorded when this application to me to record survey No. 120 was made.

2d. That it fell in and conflicted with the survey of the commons of Carondelet, as made by Brown in 1834.

3d. That it is surveyed and laid down on the south side of the common field of Carondelet, as now known, and adjoining them on the south and outside of said common field, as surveyed by Brown. It was not because said survey No. 120 had not been correctly made according to instructions that I refused to record it, nor because the lines were not correctly run according to the calls of the claim.

Brown's plat of said survey No. 120 seems to be, and I think it is, a correct survey of the calls of said claim of Gamache, as transmitted to the surveyor general by the recorder of land titles. I see no objection to it as such survey. It seems to have been surveyed bounding north by the common fields of Carondelet and east by the river, and running west to the western line of the common fields and the claim of Rheil. The other calls I do not know so much about. It is surveyed six arpens in front. Brown, a deputy surveyor, made this survey from evidence furnished him from the office of the recorder and surveyor general, and such other evidence as he could get, and his own judgment.

Re-cross examined.

Gamache's claim is not surveyed within the common fields as the same have been surveyed by Brown; that is, within what are now known as the common fields in my office, and included within the survey No. 3,103 of the outline of said common field, but outside and adjoining them on the south. The term common field is of modern origin.

Re-examined by plaintiffs.

When Brown made his survey of the commons of Carondelet, in 1834, there was no evidence in the surveyor general's office of the Gamache claim; that claim was returned to the surveyor general in 1839. The outline survey of the common field No. 3,103 was made under instructions of 1834. In 1839 Brown was instructed to survey all the Spanish cultivated fields, called now out lots and common field lots, and the town lots of Carondelet.

Conway's testimony.

Frederick R. Conway called for plaintiffs. I was surveyor general for some years—from 1835 to 1849. He looks at the plat of survey No. 120 and the connected plat aforesaid, and at the calls and description of the Gamache claim as the same was made before the recorder, and is found in the surveyor general's office, transmitted by the recorder. I think that the calls of the claim of Gamache were correctly run and surveyed by Brown, as represented on his plat thereof. I could not have surveyed it otherwise, or located it anywhere else. My predecessor, General Milburn, had approved this connected plat, and the presumption is it is correct. I consider the survey No. 120 as an approved survey; but for patents and certificates it was necessary to lay down all interferences, under instructions from the comm'r of the General Land Office, before giving out certified copies of the same. The fact that a survey like this had not been recorded did not prevent it from being an approved survey. They were still open for further action. All surveys are approved before they are recorded, and it was the constant practice to record surveys long after they were approved. I think that if I had been applied to I should not have hesitated to have recorded this survey; it had been approved by my predecessor. When parties applied for copies of surveys so approved, they were invariably recorded, and certified copies given. The custom was, when surveys were made, for the surveyor general to examine them, and, if found correct, to enter his approval in this way, and they stood until copies were called for, or there was time in the office to record them. The practice of the office was, that when the field notes or descriptions and plats were returned to the surveyor general's office, for him to examine the work and see if it had been correctly executed according to the instructions; and if so, the surveys were approved and the work paid for, and this was considered as the approval of the survey. But want of time prevented them all from being immediately and critically examined as to interferences, and finally recorded; and whenever a copy was wanted for use, this was always done in the particular case [when] applied for. This was the constant practice of the office. Looks at the survey No. 120 of the Gamache claim laid down on the connected plat, and says, I consider that as an approved survey, though not yet recorded. It was the constant practice of the office to take up surveys, so approved by his predecessor, and to record them as approved surveys when called for, as there was time to do it, but they never were certified out without showing the interferences with other surveys; the surveys were recorded for preservation, and correctly, to show all interferences. I should consider the approval of General Milburn on this connected plat an approval of these surveys. There was a claim of one Rheil laying to the west of the claim of Gamache, as surveyed; the Rheil claim is laid down on the plat of the surveyor general's office to the west of the common fields and of Gamache's claim.

Cross examined.

It was the rule to give copies when called for, and if not approved they were immediately examined and approved if correct, and recorded; when so approved the survey was presumed to be correct, until the contrary was shown. The southern call is not laid down when the call was for the common fields and for the quantity of six arpens, and there was no evidence of the claim of Constant (Lallamand.) I should be governed by the fields, and the quantity and the cultivation and possession; when there were calls for known boundaries I should go by them, and not by an unknown call. I should not think of extending the claim down to river Des Peres, because I find there a man by the name of Constant, jr.

The plaintiffs then gave in evidence the original connected plat in said book, and also the copy thereof attached to said deposition of Wm. Moss, containing said survey No. 120, and the approval thereon of General Milburn, as the same is above copied and set forth in this bill of exceptions; and it is agreed that said book may be referred to in the supreme court.

The plaintiffs then offered and read in evidence a certified copy from the surveyor general's office, of the plat and description of survey No. 120, as follows, to wit:

Survey No. 120.

Plat and description of a survey of an out lot adjoining the village of Carondelet, containing, as described, six arpens in front by forty in depth, claimed by John Baptiste de Gamache, sen., or his legal representatives, and the boundaries and extent thereof, proven before the recorder of land titles on the 6th of July, 1825, under the act of Congress of the 26th May, 1824.

[For plat see original, page 45.]

Descriptions.

Commence at the southwest corner of the common fields of Carondelet, being the northwest corner of this survey, for which there are two lime-stones heretofore set; on the southern one I make a cross, from which a black jack 4½ inches diameter bears north 8¼ east, 53 links, and a pine oak 4 inches diameter bears south 50 east, 90 links distant; thence, south 56 east, along the southwestern boundary of the common field lots of Carondelet, chain, a branch links wide, bears 118.16 chains [to] a lime-stone, the southeast corner of said common field lots 122.91 chains, intersect the central line of Third street, in the village of Carondelet, 1.76 chains; southwestward from the middle of L street 128.67½ chains, intersect the southeastern edge of Church street 1.25 chains; southwestward of the northeast edge of L

street 134.35 chains, intersect the southeast edge of Main street 11½ links south, westward of the southwest edge of L street, and most northern corner of the lot of Manuel Andrew Roque, under Nicholas Gay dit Gravier, 135.25¾ chains, intersect the southwest edge of L street, being the northeast boundary of said Manuel Andrew Roque, 90¼ links; southeastward of his most northern corner 138.85 chains, intersect the northeast edge of L street 39¼ links northwestward of the most southern corner of block No. 12; and in all this line, 139.24½ chains, to the most eastern corner of the survey, which is a lime-stone 5 inches thick, 12 inches wide, and 14 inches long, set 10 inches deep, with the edge southeastward, and make a cross on the top, from which the southern corner of block No. 12 bears S. 42° 20′ west, 5 links distant. Thence south 42° 20′ west, along the southeastern boundary of the lot in part the southeastern boundary of block No. 12, and westerly of blocks Nos. 13, 14, and 15, and partly of block No. 16, in all 17 chains 70 links, as measured with the chains, to a lime-stone, set as the most southern corner of the lot on the southeast boundary of block No. 16, at a point 59 links southwestward of the most eastern corner of said block, which stone is 3 inches thick, 12 inches wide, and 16 inches long, set 12 inches deep, the edge northwestward, and make a cross on the top. Thence north 56 west, 4.90 chains, intersect the southeastern boundary of Main street 120 links southwestward of the most northern corner of block No. 16 at 5.63, intersect the northwest edge of Main street 129 links southwestward of the most eastern corner of block No. 31, which is the lot of Joseph Ledue's legal representatives, 10.53 chains, intersect the northwest boundary of said block and lot 2.98 chains, northeastward of the most western corner of the block, at which point I set a picket 46.50 chains, a branch 12 links wide, 136.53 chains, intersect the western boundary of the commons of Carondelet, and there set a good post oak post for the most western corner of this survey, from which a hickory 14 inches diameter bears south 68 east, 8 links, and a red oak 16 inches diameter bears north 71 west, 64 links distant. Thence north 35¼ east, along the northwest boundary of said commons and of this lot, 17.52, to the place of beginning.

OFFICE OF THE SURVEYOR GENERAL,
ST. LOUIS, *December* 31, 1850.

The foregoing plat and notes of survey No. 120 of Carondelet lands, showing its interferences with the surveyed blocks of the village of Carondelet, *is* correctly copied from page 265 of the book in this office containing the returns *in this office containing the returns* of the survey of the lots and out lots of said village of Carondelet, made by Jos. C. Brown, under instructions of 15th March, 1839. The said survey No. 120 is not yet platted, described, approved, and disposed of according to law, by this office.

M. LEWIS CLARK,
Surveyor general.

dessus de leur parc. Le village vous prie bien de vouloir faire attention qu' aujourd'huy il a un grand encouragement par ce moulin et que son intention est d'ensemencer le plus qu'il pourra c'est; pourquoy il charge le Sr. Gamache de vous presenter celle ci esperant que vous voudres, Monsieur, avoir egard a sa demande, et a la misere dans la qu'elle il va être plonger, qu'il vous plaise lui accorder la continuation des terres, prenant pour borne celle du Sr. Constans au Mississippi et la rivière des Peres pour borne, renant a même village de Carondelet.

Il espere tout de votre bonté, et il croit que vous vondres bien accorder a sa demande; il necessera de rendre grace à vos bontés. Au village Carondelet le 6 Xbre, 1796.

JEAN BTE. lo ✕ GAMACHE.
marque.

La leure qui est demande est compris dans ce qui a été reservè pour fournier lebois necessaire au village à Carondelet; et la demande que fait le Sr. Gamache, ne peut avois lieu ainsi que toutes concessions accordées dans la direction de la ligne prise au bout des terres du dit village et courant paralellement au Mississippi cent cinq'te arpens plus bas. St. Louis, le 7 December, 1796.

ZENON TRUDEAU.

HAUTE LOUISIANE, village de Carondelet,
District de St. Louis des Illinois.

L. B. N. 139, F. 27.

Nous sous-signées arpentier commissione par le government certifions a ceux a qu'el apartiendra qui aujourd'huy, 21 Xbre, en vertu de l'ordre que Mr. le l'nt g'eur a passe à Mr. de Treget, capt'e comd't du dit village, pour en joindre aux habitons d'avois à faire connaitre la ligne d'une terre qui leur a été concede en date du 7 Xbre, 1796, la quelle ligne doit être parallelle à celles de Mr. Reilhe et Alvares, les dits habitants, en presence de leur comd't, sont convenus de faire tirer leur ligne à prendre de la derniere borne place a l'extremité de la profondeur de leur terres, les quelles avaient été previeusement arpentie par Mr. Pr'e Chouteau, en vertu d'une ordre de Mr. le l't g'eur. Ayant relèvé l'air de vent de ces mêmes terres, j'ai trouvé qu'elles couraient S. 28° W. J'ai suive cette même ligne 23 arp's, 3½ p'es, distance a la quelle j'ai rencontré la rivière des Peres; l'extremité de la ligne sur le bord de la dette rivière a été borne avec une pierre, ayant pour temoin deux pierres a fusil et une balle de plomb aplattie. La terre du Sr. Alvares devant ê re distant de la ditte borne de 24 p'es en suivant parallellement la même ligne, et pour que le dits habitans puissent constater, j'ai delivré le presents.

ANTOINE SOULARD.

ST. LOUIS, DES ILLINOIS, LE 25 Xbre, 1797.

Je certifie, partout au besoin sera, que messieurs les habitants de village de Carondelet m'ont requi de leur mesurer, en faire mesurer par un de mes deputés, une partie des terres qui leur fut accordie pour commune par le l't g'eur, Dn. Zenon Trudeau. Cette terre dit être arpentie par Mr. Bartelemi Cousin, qui ce rendit au village de Carondelet a cet effet, au moment d'operer sa boussole ce trouva en d'état de lui, servir inconvenient qui a empeche le dit arpentage d'avoir lieu; le peu de temps qu'il y avoit a le revoir m'a empeche de pouvoir satisfaire aux instances qui m'ont été faites par les citoyens de l'etablissement de Carondelet. En foi de quoi j'ai delivré le present aux enteresses, pour leur servir et valoir partout au besoin.

ANTOINE SOULARD,
Surveyor gen'l, t'y Louisiana.

St. Louis, 28 Fevrier, 1806.

Wednesday, June 15th, 1808.

Board met pursuant to adjournment.

Present, honorable John B. C. Lucas and Clement B. Penrose.

The inhabitants of Vide Poche claiming 6,000 arpens of land as a common, on application of said inhabitants, the board order a survey of the land from the outer end of their field lots, below the village, to the Mississippi, a single line, for the purpose of ascertaining the length of the said line in French arpens; survey to be returned this day 4 weeks. Board adjourned till Monday next, nine o'clock, a. m.

See minutes, Book No. 3, pages 206 and 207.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE.

Monday Morning, July 11, 1808.

Board met pursuant to adjournment.

Present, the honorable John B. C. Lucas and Clement Penrose.

The inhabitants of the village Vide Poche claiming 6,000 arpens of land adjoining said village, on the lower side as a common, district of St. Louis, produce to the board a notice of said claim to the recorder, dated 7th June, 1808, a petition from Jean Baptiste de Gamache to Zenon Trudeau, lieutenant governor, praying for a grant of land below said village, dated 6th December, 1796, and the decrees of the said lieutenant governor thereon, stating that the land demanded is within the limits of lands reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet, and the demand which is made by Gamache cannot take place, nor no other concessions be granted in the direction of a line taken from the end of the field lots of the village running parallel with the Mississippi, further down said river, one hundred and fifty arpens. Dated St. Louis, December 7th, 1796.

Testimony perpetuated on the rough minutes, June 15th and 24th, 1808.

Auguste Chouteau, sen., says, that he knows the inhabitants of Vide Poche, since the year 1770; have made use of the land lying below the field lots and village of Vide Poche along the Mississippi, as their com-

mons, and ever since that time have taken therefrom their fencing and fuel, but does not know the extent of the claim; that twenty-five years ago a man by the name of André built from the wood of said commons, and on the same, a boat; that he commenced the building of another; complaint was then made by the inhabitants of said village to the lieutenant governor, who ordered said André to desist from his work, as the land belonged to the said inhabitants. That about twenty-five years ago there were about thirty families of farming people who had no other pursuits; that since that time, until 1803, there continued to be about the same number of families; that the land which each said inhabitants possess individually would not be sufficient to furnish them with fuel, and that without said commons they would be obliged to desert said village; that the land held individually was purposely chosen for cultivation, without firewood.

Testimony perpetuated on rough minutes, June 24th, 1808.

Jean Baptiste Provenché sworn, says, that the village of Carondelet has been, to his knowledge, established at least 40 years ago; that the village contained, 25 years ago, about 40 families, all farmers; since about 35 or 36 years ago the said families have been using wood from the *the* land now claimed, and ever since made use of the same as a commons; in the year 1803 there was about 40 families; that, on the land claimed individually by said families, there is no fuel or fencing; have no other place to get fuel or fencing from but said commons.

Minutes, June 15th, 1808.

The board order a survey of the land, from the outer end of their field lots below the village to the Mississippi, a single line, for the purpose of ascertaining the length of said line in French arpens; survey to be returned this day four weeks.

The survey ordered by the board in the claim of the inhabitants of Vide Poche is this day returned, and said claim laid over for decision. The words "one hundred and fifty arpens" interlined before signed.

Board adjourned till Wednesday, nine o'clock, a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE.

See Minutes, book No. 3, pp. 217 and 218.

Thursday, January 2, 1812.

Board met: Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Inhabitants of the village of Vide Poche, or Carondelet, claiming 6,000 arpens of land as a commons.—See book No. 3, pp. 206 & 217. It is the opinion of the majority of the board that this claim ought not to be granted, Clement B. Penrose voting for a confirmation thereof under the usages and customs of the Spanish government.

Board adjourned till Monday next, nine o'clock, a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See Minutes, book No. 5, pages 551, 552, and 553.

Ka 39-

[For plat see original, page 55.]

Note.—The inhabitants of Vide Pouche show[ed] me what they said was the outer end of their field lots, but could not find the northwest corner; I therefore measured a line between J. Menard and L. Lajoy to the southern boundary, on the course of south 56½ east, 116 chains, and from thence 24 chains on the same course to the Mississippi. The southwest corner could not be found either.

The general course of the Mississippi, for a considerable distance up and down from the point where my line intersected it, [is] south 42 west; the courses are according to the true meridian, and the admeasurement by such a chain as the law requires.

JUNE 17th, 1808.

Pursuant to an order of the honorable board of commissioners, under date of 15th June, 1808, I surveyed and measured the distance from the outer end of the field lots claimed by the inhabitants of Vide Pouche to the Mississippi, and find the distance to be forty-eight French arpens, one French perch, and fifteen English feet, and $\frac{6144}{10000}$ of a foot.

SILAS BENT,
Deputy surveyor.

See original plat on file.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri.

A record of confirmation certificates issued by F. R. Conway, recorder of land titles in the State of Missouri, on claims to town and village lots, out lots, and common field lots, confirmed by the 1st section of the act of Congress of the 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," in conformity to instructions from the Commissioner of the General Land Office, of the 8th February and 17th May, 1831, commencing on the 12th day of April, A. D. 1834.

F. R. CONWAY,
Recorder of land titles in the State of Missouri.

No. 2.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri.

It is hereby certified, that, under the provisions of the first section of the act of Congress, approved on the 13th day of June, 1812, entitled "An act making further provision for settling the claims to lands in the Territory of Missouri," and the several acts of Congress supplementary, or having reference thereto, approved on the 26th day of May, 1824, and the 27th day of January, 1831, the inhabitants of the village of Carondelet, in the county of St. Louis, in this State, have been confirmed in their claim in common to six thousand arpens of land, being in townships 43 and 44 north, ranges 6 and 7 east of the 5th prin-

cipal meridian, the same having been regularly surveyed, as appears by a plat and field notes thereof returned to this office by the surveyor of the lands of the United States in the States of Illinois and Missouri, certified by him on the 29th day of July, 1834, and numbered 2,965, which accompanies this certificate, and to which I refer for a more full and complete description of the tract above mentioned, containing, according to said survey and certificates, nine thousand nine hundred and five acres and twenty-nine hundredths of an acre.

In testimony whereof I have hereunto subscribed my name, this the 22d day of August, A. D. 1834.

F. R. CONWAY,
Recorder of land titles in the State of Missouri.

Delivered the original of the foregoing certificate, together with the survey therein mentioned, to the authorities of the village of Carondelet.

F. R. CONWAY,
Recorder of land titles in the State of Missouri.

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, *6th February*, 1851.

I certify that the foregoing, on pages 1 to 7, is a true and complete transcript from the books, records, documents, plats, and files, in this office, of the claim of the inhabitants of the village of Carondelet to a commons.

ADOLPH RENARD,
U. S. recorder of land titles in the State of Missouri.

No. 1—*Translation of those parts of the following document which are in the French language.*

To Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant governor and commander in chief of the western part of Illinois:

The deplorable condition in which the village of Carondelet is about to fall, now and hereafter, on account of the exportation of wood, *induces the undersigned to have the** honor to state, that after the petition he handed to you on the 5th of October last, for the purpose of obtaining the continuation of those lands, you told him that, although you could not accede to his demand, you would, however, make your efforts to grant him forty arpens above their park.

The village *pays* you to be willing to turn your attention to the fact that he has at present a great inducement to work on account of this mill, and that it is his intention to sow with grain as much land as he is able to do. Therefore this petition is given in charge to Mr. Ga-

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*These five words have been introduced by the translator to supply the deficiency of the text.

mache, to be delivered to you, and he hopes that you will be pleased to take into consideration his demand and the misery which threatens him, and grant to him the continuation of the lands, (common fields,) and asking for his limits the limit of Mr. Constant, thence to the Mississippi and the river des Peres for a limit, coming to the same village of Carondelet. He expects every thing from your goodness, and believes that you will grant his demands. He shall never cease to be thankful.

At the village of Carondelet, the 6th of December, 1796.

JOHN B. GAMACHE, his x mark.

The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi one hundred and fifty arpens lower, cannot be admitted.

St. Louis, the 7th December, 1796.

ZENON TRUDEAU.

UPPER LOUISIANA, village of Carondelet,
District of St. Louis, of Illinois.

L. B. N. 139, fo. 27.

We, the undersigned, a surveyor commissioned by Government, do certify to all whom it shall appertain, that on this day, 21st of December, in virtue of the order transmitted by the lieutenant governor to Mr. de Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of December, 1796, which line must be parallel with those of Mr. Ant. Reihle and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon having their line to be drawn from the last bound placed at the extremity of the depth of their lands which had been formerly surveyed by Mr. P're Chouteau, in virtue of an order from the lieutenant governor. Having taken the bearing course of the same lands, I *I* found that they ran S. 28° W. I followed this course 23 arpens 3½ poles, at which distance I intersected the river Des Peres; the end of the line on the bank of the same river has been bounded with a stone, having for witness two flint stones and one flattened bullet. The land of Mr. Alvarez must be distant from the same stone bound 24 feet in following the same line parallel; and in order that the said inhabitants may prove the same, I have delivered these presents.

St. Louis of Illinois, the 25th of December, 1797.

ANTOINE SOULARD.

I certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure for them, or to cause to be measured by one of my deputies, a portion of land which was granted to them as a common by the lieutenant governor, Don

Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himself to the village of Carondelet for that purpose; but at the moment he would set his instrument he found it out of order; an inconvenience which did then prevent the said survey to be then made; and the short space of time that was left to attend to it again has hindered me from being able to satisfy to the urgent calls made on me by the citizens of the settlement of Carondelet.

In faith whereof I have delivered the presents to the interested, that they may serve the same wherever needed.

ANTOINE SOULARD,
Surveyor General, Territory Louisiana.

St. Louis, 18th February, 1808.

NOTE.—That part under No. 1 of this translation, from the imperfectness of the original, could be rendered in two versions, either as a collective petition of sundry inhabitants of Carondelet, asking for common fields, and entrusting Gamache with the care of the handing of their documents, or as a demand made by Gamache for himself. The last version has been adopted by the translator as the more conformable to the expressions used by Zenon Trudeau in his declaration upon the request of and the wording of the proceedings of the board of commissioners in the claim of the Carondelet commons.

ST. LOUIS, *5th February*, 1851.

I made, in 1840, the foregoing translation.

ADOLPH RENARD.

To the admission of which the plaintiffs objected, both as a transcript and as copies of the separate documents therein contained, and the objections were overruled by the court and the same admitted generally; and the plaintiffs, by their counsel, excepted.

The defendants then offered in evidence the plat and field notes of an unapproved survey of the commons of Carondelet, purporting to have been made by Rector under Langham, surveyor general, and certified from the surveyor general's office; to the admission of which the plaintiffs objected, and their objection was overruled and an exception taken, when the same was read and shown to the jury, as follows: And it is agreed that the same may be read and shown in the supreme court, using the copy aforesaid in the hands of the defendants' counsel, without being more fully set forth herein.

The defendants then offered in evidence a plat and description of survey No. 3,012 of the commons of Carondelet, made by Joseph C. Brown, deputy surveyor, certified from the office of the surveyor general, examined, approved on the 29th July, 1834, and made under the instructions of the 10th March, 1834, to the admission of which the plaintiffs objected, and their objection was overruled and an exception taken, when the same was shown and read to the jury as in the said certificate copy marked Ex. H, which copy, it is agreed by the parties,

may be used and referred to in supreme court, in the hands of the defendants' counsel, without being more fully set forth herein.

The defendants then offered and read in evidence a certified extract from the list of claims transmitted by the recorder of land titles to the surveyor general under said act of the 26th of May, 1824, containing Hunt's certificate at the foot of the list first transmitted by him as recorder, as follows, to wit:

Exhibit I.

RECORDER'S OFFICE, ST. LOUIS,
October 15, 1827.

I, Theodore Hunt, recorder of land titles in the State of Missouri, do certify the foregoing record, contained in forty-seven pages, commencing with Louis Lemond and ending with the field lot of Titus Strickland, contains all the village lots, out lots, and common field lots, the boundaries of which have been proven before me, under the provisions of an act of Congress, approved the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further (provision) provisions for settling the claims to land in the Territory of Missouri.'"

THEODORE HUNT.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, ST. LOUIS, 19*th February*, 1852.

I certify the above to be a correct copy of the original certificate of Theodore Hunt, recorder of land titles in the State of Missouri, to the list on file in this office, which he returned to the surveyor general, as prescribed by the 3d section of the act referred to in the said certificate. The said list is without heading, and the above certificate is the only one that is found therein.

M. LEWIS CLARK,
Surveyor general.

The defendants then offered in evidence a connected plat of the town or village of Carondelet, surveyed by Joseph C. Brown in 1839, made at the same time and under the same instructions as the other surveys contained in Brown's book of returns of Carondelet surveys above mentioned, and contained in said book, which said plat was endorsed approved, on the face thereof, in the same manner as the connected plat of the common fields above mentioned, and dated the same date of 15th December, 1840, on which are shown the private lots of the town, of which the six private lots mentioned below in M. L. Clark's testimony appear to be within the survey of the Gamache claim, and laid down as stated by said Clark in blocks Nos. 13, 14, 15, 31, and 32; to the admission of which the plaintiffs, by their counsel, objected; their objections *was* overruled, and an exception taken, and the same

was read and shown to the jury, which plat, or a duly certified copy thereof, it is agreed by the parties, may be used or referred to in the hands of the defendants' counsel in the supreme court, without being more fully set forth herein.

M. L. Clark's testimony for defendants.

M. L. Clark was then called by the defendants, and testified that he had examined the first list transmitted by Recorder Hunt to the surveyor general's office, to which the certificate of Hunt, above mentioned, is appended, and he did not find the claim of Jno. B. Gamache, senior, or legal representatives, contained therein. The six private claims of Roque sub. N. Gay dit Gravois, Chouquette des Noyers, Chaitrand, Le Dues' representatives, and L. Moque, are found in said first list of Hunt's, and they are located in blocks Nos. 13, 14, 51, 31, and 32, of Brown's survey of said town in 1834; that of Roque sub. Gay dit Gravois, being 120 x 300 feet; that of Choquette being 150 x 300 feet; Des Noyers 150 x 300 feet; Chartrand 150 x 300 feet; Le Dues' reps. 240 x 300 feet; Moque 150 x 150 feet. These private lots have all been surveyed, and the surveys approved and recorded, and the same are correctly represented on the plat aforesaid of said village by Brown.

He names the squares of Brown's survey of the town which conflict with the Gamache survey, as follows:

Blocks Nos. 13, 14, 15, 32, 33, 34, 60, 61, 78, 79, wholly and in part, Nos. 12, 16, 31, 62, 77, 80, 99.

A copy of a diagram of certain town lots and squares in the village of Carondelet is shown to the witness, and he says the same is a copy in his office, made at his instance, for the use and information of his office, from a diagram which he found in the office of the recorder of land titles, and which was supposed to have been used by Recorder Hunt, and the certificates thereon are put on by him as surveyor general.

Cross examined.

The copy of the supplementary list of claims proved before the recorder, above set forth in the plaintiffs' evidence, is shown to the witness. He says it contains several supplementary lists transmitted by Recorder Hunt, and the last one by Recorder Conway, to his office after the first list of Hunt above mentioned, to which the certificate of Recorder Hunt aforesaid, in the defendants' evidence, is appended, and that the same were added to and attached by wafers to the original list in his office as they were received, and the originals still remain so attached as a part of Hunt's list *is* his office; that the supplementary list containing the first sixteen claims were transmitted by Recorder Hunt during his term of office, after said first list, and between 1827 and the 17th of July, 1828; and that the claim No. 17 was transmitted by Recorder Conway on the 12th of March, 1839. It had been put with the other lists, and when I came into office I attached it with

wafers to the rest. The practice of the office and my predecessor has been to treat these supplementary lists as a part of the list of claims proved before the recorder of land titles, and the claims so transmitted have been acted upon and surveyed in the same manner with the others down to this time, except that this claim of Gamache is not yet recorded. I refused to record this survey No. 120 for the reasons before given in my testimony, and not because I did not recognise the claim as transmitted by Recorder Conway.

Claim No. 1 of these supplementary lists, being that of Antoine Govereau, was not contained in Hunt's first list; the others, except that of Gamache, were mentioned in the first list.

They have all been surveyed and disposed of by the surveyor general, except that this one of Gamache is not yet recorded and finally disposed of.

Re-examined.

There are about 1,100 claims, I think, in Hunt's first list. The diagram above mentioned is shown witness, and he says that the squares of this diagram differ from and do not accord with the squares of Brown's survey aforesaid of the town of Carondelet. They are irreconcilable with one another, and the numbers of the squares do not correspond.

The defendants then offered and read in evidence a certified copy from Hunt's minutes, from the office of the recorder of land titles, of the six private claims above mentioned, which fall within the Gamache survey as follows, to wit:

Exhibit K.

Testimony relating to town and village lots, out lots, and common field lots, in, adjoining, or belonging to the several towns or villages of Portage Des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa-a-Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine-a-Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by act of Congress passed May 26, 1824.

THEODORE HUNT,
Recorder of land titles.

Hunt's minutes—Book No. 1, p. 1.

Manuel André Roque, under Nicholas Gay dit Gravier, claims a lot in square No. 12, in the village of Carondelet, containing one hundred and twenty feet in front by three hundred feet in depth, bounded south by part of same square, west by Main street, north by L street, and east by the Mississippi, leaving a space for a tow.

Mary P. Ledue, being duly sworn, says *he* knows the lot claimed, and that prior to and on the twentieth day of December, eighteen hun-

dred and three, this lot was possessed and occupied by Nicholas Gay dit Gravier, who afterwards sold it to Manuel André Roque.

M. P. LEDUE.

Sworn to before me, Nov. 15, 1825.

THEODORE HUNT,
Recorder land titles.

Minutes, No. 3, p. 63.

Henry Chouquette, deriving title from Amable Chartron, claims a lot in the village of Carondelet, a square No. 12, containing one hundred and fifty feet in front by three hundred in depth, bounded north by balance of square, east by the Mississippi, *north* by cross street M, and west by Main street.

Peter Shultz, being duly sworn, says that he knows the lot claimed, and that prior to and on the twentieth day of December, eighteen hundred and three, this lot was owned and occupied by Amable Chartron, who owned it until he sold it to Henry Chouquette, who has owned and occupied it ever since.

his
PETER ⋈ SHULTZ.
mark.

Sworn to before me, July 23d, 1825.

THEODORE HUNT,
Recorder land titles.

See minutes, No. 2, p. 90.

Louis Desnoyer, in his own right, claims a lot in the village of Carondelet, being part of square No. 13, containing one hundred and fifty feet in front by three hundred in depth, bounded east by the Mississippi, leaving a tow between the lot and river, south by N street, west by Main street, and north by balance of square.

John Baptiste Vien, being duly sworn, says he knows the lot claimed, and that upwards of twenty-three years this lot *lot* was owned and occupied by Louis Desnoyer, who has occupied it ever since.

his
JOHN BAPTISTE ⋈ VIEN.
mark.

Sworn to before me, June 24th, 1825.

THEODORE HUNT,
Recorder land titles.

See minutes, No. 2, p. 28.

Amable Chartron, sen'r, legal representatives under Louis Moques, claim a lot in the village of Carondelet, being part of square No. 14, containing one hundred and fifty feet in front by three hundred in depth, bounded east by the Mississippi, leaving a space for a tow and road, south by balance of square, west by Main street, and north by N street.

Louis Desnoyer, being duly sworn, says that he knows the lot claimed, and that twenty-three years ago, and upwards, this lot was owned and occupied the same until it was sold to Courtoise, who sold it to Amable Chartron, sen'r, eighteen years ago.

his
AMABLE ⋈ CHARTRON.
mark.

Sworn to before me, June 13th, 1825.

THEODORE HUNT,
Recorder land titles.

See minutes, No. 2, p. 35.

Louis Moaques claims a lot in the village of Carondelet, in square No. 22, containing one hundred and fifty feet in front by one hundred and fifty in depth, bounded north by N street, east by Main street, south by and west by parts of same square.

Louis Menard, being duly sworn, says that prior to and on the twentieth of December, eighteen hundred and three, this lot was possessed and occupied by Louis Moaques, who has possessed it ever since.

his
LOUIS ⋈ MENARD.
mark.

Sworn to before me, August 24, 1825.

THEODORE HUNT, *Recorder L. T.*

Minutes No. 2, p. 169.

Joseph Ledue's legal representatives claim square No. 21, in the village of Carondelet, containing two hundred and forty feet in front by three hundred feet in depth, bounded north by O street, east by Main street, south by P street, and west by Church street.

François Fournier, being duly sworn, says he knows the square claimed, and that twenty-four years ago this square was possessed and occupied by Joseph Ledue.

his
FRANCOIS ⋈ FOURNIER.
mark.

Sworn to before me, November 19, 1825.

THEODORE HUNT,
Recorder land titles.

Hunt's minutes, No. 3, p. 75.

RECORDER'S OFFICE, ST. LOUIS,
12th September, 1851.

I certify that the foregoing is correctly transcribed from the books in this office containing the minutes of the testimony taken by Theodore Hunt, recorder of land titles in the State of Missouri, pursuant to the

first section of the act of Congress of the 26th of May, 1824, entitled "An act supplementary to an act passed the thirteenth day of June, eighteen hundred and twelve, entitled 'An act making further provisions for settling the claims to land in the territory of Missouri.'" Eleven words crossed over at the top of the second page before signing the certificate.

ADOLPH RENARD,
U. S. recorder of land titles in the State of Missouri.

Bill of exceptions continued.

To which the plaintiffs objected; their objection was overruled and an exception taken.

Alvarez claim.

The defendants then offered in evidence a certified copy from the office of the recorder of land titles, of the notice of claim and proceedings of the old board of commissioners from 1807 to 1812, of the petition of Alvarez, and the concession of Trudeau laid before the board, and of the plat and survey of the same made by order of the board by Rufell, deputy, under Silas Bent, surveyor general, in relation to the claim of Eug. Alvarez. To the admission of which the plaintiffs objected. Their objection was overruled, and an exception taken, and the same was read to the jury, in which reference was made by defendants' counsel to the following words contained in said petition as having some bearing on this case, to wit:

"Suplica se sera concedia partiendo de los limites del establecimiento de Carondelet, hasta los de Mr. Reihl que considera el exponente que seran como seis arpanes de frente dando sufaebada [su l'un lado] a la rivera del padre sobra quarenta de profundor y del otro lado de diebra [detta] rivera, dies arpanes profundor y del otro lado de diebra rivera, diez arpanes de frente partiendo de los mesmos limites de Carondelet temindos con las tierras del Dourino con quarenta de profundor el todo seri prepricio de persona."

Which it is agreed the defendants' counsel may translate to the court; and it is also agreed, that the certified copy aforesaid in the hands of the defendants' counsel, and marked exhibit L, may be referred to in the supreme court, without being more fully set forth herein.

Calgan's claim.

The defendants then offered in evidence a certified copy from the recorder's office, of the papers and proceedings in relation to the claim of John Calgan, consisting of—

1. Notice of claim.
2. Petition of Chas. Valle, dated 11th April, 1797.
3. Concession of Trudeau, of same date.
4. Plat of survey by Soulard, and field notes, dated 21 Aug., 1803.

5. Deed from Valle to John Calgan, dated 6th Feb., 1804.
6. Certificate of Soulard, dated 4th April, 1806.
7. Proceedings of the board of commissioners, 1806 to 1811.

And the defendants' counsel refer to the deed from Charles Valle to John Calgan, dated 6th February, 1804, containing the following words, as having some bearing on this case, being the description of the land conveyed by said deed as follows, to wit:

"Quartro arpanes detiena [de tierra] defiente, [de frente,] y quarenta de profundidad situado en la rivera que Claman Gravois y linda de un lado a la tierra del Sen'r Didier, de otro al Gov'r Gregorio Surpy y del otro a la corunna de Carondelet."

And also the following words of said petition:

"El vous plaira de lui concede quinse arpens de large sur quarente de profundeur, prenant pour borne celle du village de Carondelet."

To the reading of which documents the plaintiffs objected; their objection was overruled, and an exception taken, and the same were read to the jury; and it is agreed by the parties that the said certified copy in the hands of the defendants' counsel, (marked Ex. M.,) may be referred to, and used in the supreme court, without being more fully set forth herein, and that the defendants' counsel may give his own translation of the words above mentioned.

Durin's release.

The defendants then offered in evidence a deed of release from Wm. Durin to the inhabitants of the town of Carondelet, dated 17th August, 1814, recorded 22d March, 1838, of all his rights acquired by an instrument signed by certain inhabitants of said town, and giving him permission to build a water-mill at the junction of the Gravois creek and the river des Peres, south of the river des Peres, on lands claimed by the inhabitants of Carondelet as commons. To the admission of which the plaintiffs, by their counsel, excepted. Their exception was overruled and an exception taken; and it is agreed that the release aforesaid in the hands of defendants' counsel may be referred to and used in the supreme court, without being fully set forth herein.

Incorporation of Carondelet.

The defendants also offered in evidence a certified copy from the records of the county court of St. Louis county, of the act of incorporation by said court of the inhabitants of the town of Carondelet, dated the 20th August, 1832, done by authority of an act of the legislature of Missouri. It was admitted that the said inhabitants had been so incorporated of that date, but said evidence was objected to for incompetency and irrelevancy in this case by the plaintiffs. Their objection was overruled and an exception taken; and it is agreed by the parties that the said certified copy in the hands of the defendants' counsel may be referred to in the supreme court, without being more fully set herein, marked Ex. O.

Ordinances of Carondelet.

Defendants also offered in evidence certified copies of certain ordinances of the "inhabitants of the town of Carondelet," between the years 1833 and 1839, entitled Ordinances authorizing the leasing of the Carondelet commons, south by the river des Peres, and for preventing trespassing and cutting wood and timber on the commons of Carondelet, and to prevent the removal of the commons landmarks. To the admission of which the plaintiffs objected; their objection was overruled and an exception taken; and it was agreed that the certified copies aforesaid of said ordinances in number, of the date of , in the hands of the defendants' counsel, and marked Ordinances Ex's, No. 1 to No. inclusive, may be referred to in the supreme court without being more fully set forth herein.

Lease from inhabitants of Carondelet to F. X. Piquignot.

Defendants offered in evidence two leases from the inhabitants of the town of Carondelet to the defendants, F. X. Piquignot, of lots Nos. 33 and 34 in controversy in this case, dated on the 3d June, and the other the 17th April, 1847; and it is agreed by the parties that the same in the hands of defendants' counsel, marked Ex's P and Q, may be referred to in the supreme court without being more fully set forth herein.

Lease of inhabitants of Carondelet to Jane Prichart, Ex. R.

Defendants also offered in evidence a lease from the inhabitants of the town of Carondelet to one Jane Prichart, dated 17th of January, 1836, of a tract of 180 acres of land, situated *on* [within] the line of commons south of the river Des Peres; to the admission of which the plaintiffs, by their counsel, objected; their objection is overruled and an exception taken; and it is agreed that the said lease in the hands of defendants' counsel, marked Ex. R., may be referred to in the sup. court without being more fully set forth herein.

Lease of inhabitants of Carondelet to John Bigham, Ex. S.

Defendants offered in evidence a lease from the inhabitants of the town of Carondelet to John Bigham, dated April 21st, 1838, of a lot of land containing acres, situated *on* [in] the claim of commons south of the river Des Peres; to the admission of which the plaintiffs objected; their objection was overruled and an exception taken; and it is agreed that the same in the hands of the defendants' counsel, marked Ex. S., may be referred to in the sup. court without being more fully set forth herein.

Letters from the Commissioner of the General Land Office.

Defendants offered in evidence certified copies of *a* letters from the Commissioner of the General Land Office to N. & S. A. Holmes and Charles C. Whitlesey, dated 4th February, 1850, and one to M. L.

3234.

Clark, surveyor general, of the same date; and a letter to said N. & S. A. Holmes from the surveyor general, dated 18th March, 1850, and one of same date to M. L. Clark, surveyor general, relating to the claims of the legal representatives of John B. Gamache, sen.; to the admission of which, or either of them, the plaintiffs objected, and their objection was overruled and an exception was taken, and the same were then read to the jury, as follows, to wit:

Letter No. 1.—*Copy.*

GENERAL LAND OFFICE, *February* 4, 1850.

GENTLEMEN: In the case of the legal representatives of John B. Gamache I have received your application of the 31st October last, the surveyor general's communication of the 29th November, and the rejoinder of the 6th December last.

These have been duly examined and considered in this office, in connexion with so much of the surveyor general's report of the 15th April, 1840, on the Carondelet commons, as relates to Gamache.

That report is accompanied by a plat X of survey No. 3,102, in townships 43 and 44 north, ranges 6 and 7 east, of the Carondelet commons, and exhibits the position of a survey made in 1839 by Brown, for Gamache, lying in the extreme northeastern part of the commons, extending over a part of the village.

On the said plat X is a statement, dated the 15th April, 1840, from Surveyor general Milburn, in which there is the following as to the case of Gamache: "Under the act of Congress, of the 26th of May, 1824, supplemental to the law of 12th June, 1812, the representatives of John B. Gamache, who had been denied a concession south of the common field by Governor Trudeau, availed themselves of the very liberal practice of the recorder under the said act of 1824, and claimed a portion of the same land refused by Trudeau as an 'out lot,' adjoining the village of Carondelet, containing six arpens in front by forty in depth," bounded, &c.

Paper A, accompanying that report, contains a copy of Gamache's application, dated 6th December, 1796, to Lieut. Governor Trudeau, with a copy of Trudeau's order or decision in the premises, dated the 7th of the same month.

The surveyor at St. Louis having declined to recognise the survey by Brown for Gamache, as approved, and to certify the same to the recorder, you apply to this office to give order to Surveyor general Clark, "requiring him to return the survey" of "the tract of six by forty arpens in the name of John B. Gamache, sen., or his legal representatives, to the recorder of land titles, and that the recorder be directed to issue" to you "a certificate of confirmation in the usual form, that" you "may have the evidence of" your "title in the usual form, for the purpose of prosecuting" your "rights in the courts having competent jurisdiction."

In behalf of the representatives of Gamache, it is contended that they

are confirmed by the act of the 13th June, 1812. The first section of the supplemental act of the 26th May, 1824, made it the duty of the individual owners, or claimants whose lots were confirmed by the act of 1812, on the ground of inhabitation, cultivation, or possession, prior to the 20th December, 1803, "to proceed within eighteen months after the passage" of the act of 1824 "to designate their said lots by proving, before the recorder of land titles for said State and Territory, the fact of such inhabitation, cultivation, or possession, and the boundaries and extent of each claim, so as to enable the surveyor general to distinguish the private from the vacant lots appertaining to the said towns and villages."

The 3d section of the said act of 1824 made it the duty of the recorder to issue a certificate of confirmation for each claim confirmed, but further declares, as follows:

"And, so soon as the said term shall have expired, he shall furnish the surveyor general with a list of the lots so proved to have been inhabited, cultivated, or possessed, to serve as his guide in distinguishing them from the vacant lots to be set apart as above described, and shall transmit a copy of such list to the Commissioners of the General Land Office."

A report or list, purporting to contain all the claims proved up under the act of 1824, was accordingly returned to this office in 1827, but that list does not embrace this particular claim of Gamache for 6 by 40 arpens, without the limits of the Carondelet commons.

We have no powers to look behind that list, in order to determine what has or has not been confirmed, any more than we could look behind the face of a report of a board of commissioners, or of the recorder, which has been confirmed by a law of Congress, and take cognisance of a case not embraced by such report, even if satisfied that it has been omitted by the reporting officer through inadvertence. This is a well-settled principle, (see instructions to register and receiver, 13th April, 1835, 2d part Birchard's comss'r, printed laws, Instructions and Opinions, page 757, &c.)

As the 3d section of the act of 26th May, 1824, then expressly declares that the *the* list to be furnished by the recorder "shall serve as a guide" to the surveyor general in the execution of the duties devolved on him by the act, and it is not shown that the claim in question is not embraced by that list, neither that officer nor this office has the power to treat the claim in question as confirmed and entitled to an approved survey, and consequently, in my opinion, the commissioner has not the legal ability to comply with your application in the premises.

Very respectfully, your obedient servant,

(Signed) J. BUTTERFIELD, *Comm'r.*

N. & S. A. HOLMES, and
CHAS. C. WHITTLESEY,
Att'ys for legal reps. of John B. Gamache, St. Louis, Mo.

(*Certificate belonging to foregoing letter.*)

OFFICE OF THE SURV'R GEN'L FOR ILL. AND MO.,
St. Louis, February 3d, 1851.

I certify that the foregoing is correctly copied from the "copy" of a letter transmitted to this office by the Commissioner of the General Land Office, with his letter of the 4th of February, 1850, and now on file in this office.

M. LEWIS CLARK,
Surveyor general.

Copy.

GENERAL LAND OFFICE, *February 4th*, 1850.

SIR: For your information I herewith enclose a copy of my communication, of this date, to Messrs N. & S. Holmes, and Chas. C. Whittlesey, respecting the case of the legal reps. of Jean B. Gamache, claiming a survey of a tract, 6 x 40 arpens in the extreme northeastern part of survey No. 3,102, for the commons of Carondelet.

You will be pleased to lay the enclosed open to the inspection of the recorder of land titles at St. Louis, in order that he may take a note of its contents for his information and government.

Very respectfully,
Your obedient servant,
(Signed) BUTTERFIELD,
Co missioner.

M. L. CLARK,
Surveyor general, St. Louis, Mo.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
ST. LOUIS, *3d February*, 1851.

I certify that the above is a correct copy of a letter from the Commissioner of the General Land Office, of the 4th February, 1850, on file in this office.

M. LEWIS CLARK,
Surveyor General.

Letter No. 3.—Copy.

GENERAL LAND OFFICE, *March* 18, 1850.

GENTLEMEN: I have the honor to acknowledge the receipt of your further arguments of the 25th and 26th ult., in the case of the legal representatives of Gamache, claiming a lot of 6 x 40 arpens, covering part of the village and within the limits of a survey No. 3,102, which has been made for the commons of Carondelet.

I have also received a communication of the 27th ulto. from the recorder on this subject.

After an examination of the further arguments and communications alluded to, and a respectful consideration of the same, I do not feel warranted in departing from my decision as made known in the communication to you of the 4th ulto. I beg leave here, also, to remark that in my opinion, when recorder Hunt made his return in 1827, which he certified to contain "all the claims" proved, or that the power of the recorder under the law, so far as that matter is concerned, was exhausted; and further, that we must now treat that list as evidence of all the claims which he regarded as legally proved up.

I have also considered the objections urged in Mr. Whittlesey's argument against the rule laid down in Commissioner Hayward's instructions of the 17th May, 1831, which contemplate a return of surveys as pre-requisite to the issuing, by the recorder, of a confirmation certificate.

In that matter I do not feel warranted in setting the rule aside, considering it to be a necessary one, in order to give proper effect to the intent of the act of the 26th May, 1824.

Adhering to my decision, I have, pursuant to *to* your request, prepared the case with a copy of that decision, for submission to the honorable Secretary of the Interior, before whom will be laid the argument of 31st October last, the surveyor general's reply of 29th November, the rejoinder of 6th December last, the report of the surveyor general, dated 15th April, 1840, with plat X, paper A, Gamache's application and Trudeau's order, with a translation; and also, your further arguments, with the communication from the recorder.

When the result shall have been made known to this office, it will be duly communicated to you.

Very respectfully, your obedient servant,

(Signed) J. BUTTERFIELD, *Comm'r.*

Messrs. N. & S. A. HOLMES, and
CHAS. C. WHITTLESEY,
Atty's for legal reps. of Jean B. Gamache,
St. Louis, Missouri.

OFFICE OF THE SURV'R GEN'L FOR ILL. AND MO.,
Saint Louis, Feb. 3d, 1851.

I certify that the foregoing is correctly copied from the "copy" of a letter transmitted to this office by the Commissioner of the General Land Office, with his letter of the 20th of March, 1850, and now on file in this office.

M. LEWIS CLARK,
Surveyor general.

Letter No. 4.—*Copy.*

GENERAL LAND OFFICE, *March 20th,* 1850.

SIR: I have received your letter of the 19th ultimo, respecting the Gamache survey. As the attorneys of Gamache requested, in case I

adhered to my decision, that the matter be laid before the honorable Secretary of the Interior, I have accordingly submitted the same, and have addressed a letter to the Messrs. Holmes and to Mr. Whittlesey, bearing date the 18th instant; a copy of which, for your information, I herewith enclose.

Very respectfully, your obedient servant,

BUTTERFIELD, *Comm'r.*

M. LEWIS CLARK,
Surveyor general, St. Louis, Mo.

OFFICE OF THE SURV'R GEN'L FOR ILL. AND MO.,
February 3d, 1851.

I certify that the above is a correct copy of a letter from the Commissioner of the General Land Office, of the 20th March, 1850, on file in this office.

M. LEWIS CLARK,
Surveyor general.

Milburn's testimony, called by defendants.

The defendants then called as a witness William Milburn, who testified that he had been surveyor general of the United States for Illinois and Missouri, from 1839 to 1841; that previous to that time he had been a clerk in this office for the greater part of the time between 1817 or 1818 down to 1839, and became familiar with the practice of that office. He is shown connected plat of the common field of Carondelet above mentioned, and attached *and* to the deposition of Wm. Moss, aforesaid.

The defendants' counsel offered to prove by said witness what he meant by his approval written thereon; to which the plaintiffs objected; their objection was sustained, and an exception taken by the defendants.

The defendants offered to prove, by witness, that the approval written under said plat was intended to be an approval of that portion of said plat which is known as the common field only, and not of the whole plat, as it purports to be.

(The following statement by Judge Hamilton, and question by defendants' counsel, filed February 23, 1852, herein, is here directed to be inserted by plaintiffs' counsel.—CLERK.)

Judge Hamilton's statement.

"The defendants introduced General Milburn, and offers to prove that his endorsement of approval on map, headed "connected plat of the common field of Carondelet," was intended only as an approval of so much of the map as constituted the common fields; that the survey for representatives of Gamache was no part of the plat of such common fields; that it was laid down merely as an adjoining survey, and was never approved by him, either as part of the common fields or as a separate survey.

"A. H.
(Signed)
"February 23d."

Plaintiffs objected; their objection is sustained, and an exception taken by the defendants' counsel.

Witness states the course of practice in the office during his time. When surveys were made and returned by the deputy, it was the practice to examine his field notes and plats to see if correct and right; and if so an approval, with the date thereof, was endorsed on the plat, for the purpose of passing the account of the surveyor with the head office at Washington. The surveyor was required to return field notes and plat. An approval of his survey, as to his operation in the field, was necessary before he could be paid for the work, but it did not necessarily follow that the survey would be finally approved and recorded. Mr. Whitcomb introduced the rule of requiring surveys so made to be approved before paying the deputy; nothing more was required than a simple endorsement of approval, and the date thereof, showing that the work was approved; any other form of approval might be used. Don't remember whether this particular survey of the Gamache claim was examined or not; in my opinion the recording of a survey is the final approval of it.

I have talked with old citizens of the village of Carondelet, now dead, about the boundaries of their claim to commons; they were old persons even before the change of government. They said they claimed as far south as Brown's *cave store* [corner stone] on the river bank, at the southeast corner of Brown's survey, and then at right angles with the river Mississippi to the west line run by Brown, as begun by Soulard's line, to the common fields of said village, and with fields up as far north as the Sugar-loaf on the Mississippi. This evidence of reputation as to the boundary of commons was objected to by the plaintiffs; their objection was overruled, and an exception taken.

What did they say about uses of said commons in Spanish times?

Question objected to and objections sustained, and exceptions taken by the defendants' counsel.

They produced Lieut. Governor Trudeau's answer, and the petition signed by John B. Gamache, and Soulard's return of a survey begun by him; and said they claimed, according to these documents, to the west line indicated therein, and as run by Soulard.

Question by defendants. Did you ever converse with Jos. C. Brown, surveyor, in his lifetime, about his finding of an old line of blazed trees south of the river Des Peres?

Objected to by plaintiffs and objection sustained, and exception taken by defendants.

Some of my conversations with the old citizens, as above stated, were about the year 1840, when a controversy arose about the [that] commons, and some as early as 1834; and they are all since, about the time, and shortly previous [to] Langham's instructions to Brown to survey the commons of Carondelet. I have been in that neighborhood as much as 25 or 30 years ago; never went over the lines of Brown's survey; there were trees standing to the west of Lamai ferry road back of the common fields, and I think some east of that road. I think I

3/37.

conversed with Pierre Delor; can't recollect whether he said that he was charged with Gamache to present the petition for extension of their land in behalf of the inhabitants. The practice of a formal approval, and recording of surveys, arose in Langham's time; some in Dunklin's time, after 1830. I was not in the office at the time Rector's survey was made; that survey was kept and referred to in the office.

Was it acted upon as a survey?

Question objected to by plaintiffs; objection overruled, and exception taken.

It was considered as a survey in the office, though not approved nor recorded. The above conversations took place about the time of the instructions to Langham to survey the commons in 1834; they claimed, with Soulard's line, to the southwest corner of the commons, and then to the river. Brown was instructed to retrace and run Rector's lines, and connect them with the other public surveys. I may have mixed the conversations of 1834 and 1840 in my testimony. Rector's survey has been in the office since 1817, and was made before that time, probably in 1816. The lines correspond with those of Brown's survey.

All the evidence relating to Rector's survey objected to by plaintiffs, and admitted, and exception taken.

I recollect no difference between the conversations of 1834 and those of 1840. My recollection is not distinct about them.

A. Chartrand for defendants.

Amable Chartrand called by defendants.

Admitted that he is interested in the same tract as the ground in controversy, and is an inhabitant of the city of Carondelet. Objected to by plaintiffs on account of interest, and overruled, and an exception taken.

I was born in Carondelet on 2d January, 1791; have lived there all my life; recollect some things as far back as 1796 or '7; recollect the change of government; recollect John B. Gamache, sen'r; he lived in a house under the elm tree, near where the Town Hall now stands. My father, Amable Chartrand, died 25 years ago. John B. Gamache, sen'r, died 52 years ago, more or less. He never lived in any other house that I know of; lived on a lot of 150 × 150 feet on N. W. corner of the block on E. side of Main street, or road, through the village. My father owned the lot east of Gamache's; he sold it to Gabriel Constant, and there was a house on it. My father removed there in 1796. Next, south of Gamache, Louis Prejol owned a lot, ½ block, of Tenard's; Aug. Gamache occupied it, a house on Prejol's lot, in Spanish times; a cross street, south of Gamache; then Louis Menard owned 2 lots, ½ block: south Menard, Loisel owned and had a house; over the next cross street Louis Courtois, sr., and next Charles Robert houses on these lots; across street from Robert, Nich. Gay dit Gravois lived to the south of the cross street below Robert; south of Gravois,

Langlois sold lot to Henry Caonquette, who occupied it afterwards; south of that Fournier occupied; Des Noyer south of Fournier; a house on Des Noyer's lot, but not on Fournier's; in Spanish times Charles Valle lived on Des Noyer's lot before change of government; and Des Noyer married his widow; south of Des Noyer were Honore and Motiez; Mrs. Rondin next south; there may have been others south, but don't recollect whose; Le Duc's lot was next west of that last mentioned, not occupied [by] Le Duc before change of government, but by one Charles Hot; knew Moques on west side of Main street, next block above Le Duc's; Moques had a house on his lot; there were none to the south of this prior to 1803; there may have been some one below Rondin, on the river, perhaps R. Martin afterwards; not positive; didn't recollect any other; no other houses below; I lived on the lot back of where Mad. Hoffman's Jefferson hotel is; knew the lot Picot's house is on; recollect a plum tree; don't know who planted it; N. Gay dit Gravois lived near there; Jos. Des Noyer lived in block next north of Picot's house, after change of government, not before.

Commons; I know they had a claim of commons in Spanish times.

Question. Do you know the western line?

I went with Rector at time he ran his line.

Objection made by plaintiffs to the admission of any evidence of boundary and user of commons. Objection overruled, and exception taken.

Objection made by plaintiffs to any evidence of matters subsequent to the change of government. Overruled, and exception taken.

I went with Rector to the corner, and followed Alvarez line down. Ant. Barrada, M. Tesson, there; I followed the chain carriers and crowd of people present; they followed that line down to S. W. corner begun in the western line of the fields back of L. Courtois' lot; found stone there; not positive; knew no blazed line of trees on west line of commons before the corporation had it blazed; don't remember how far he went with them. The land south of the common fields was used always for commons, cutting timber, rails, pickets, and firewood, as they wanted; they cut wood south of the river Des Peres, same as north, *so* prior to the change of government; south of the river Des Peres the commons were used in that way until they were leased out. Has heard old citizens speak of the west line running southwardly 150 arpens, most of them inhabitants of Carondelet, and as long ago as I can recollect. They said their west line was from the S. W. corner of the common field with Alvarez line 150 arp. lower down. The south line of the present common field where Mad. Rondin's south line was; have always known the land to the south of Mad. Rondin's as commons like the rest; has cut wood on it himself; always called it commons; 20 years ago there were trees standing on it; they have always cut wood on [it] since I recollect.

Cross examined.

Did not know Clement De Lár de Fregent, nor his 6 × 40 arpens

lot; knew Peter de Lar was too young then; I recollect John B. Gamache, sen'r, not the "Tabatiere a Gamache;" had heard it talked of for a long time; presume it was a nickname given in old times; never saw the tobacco house of Gamache; have always heard of the claim called "La Tabatiere or Gamache;" it is very old. Gamache's house was about the middle of the village; think there were rather more houses to the north than the south of it. They cut hay and wood both to the south and north of the village; the country was all open towards St. Louis, and southwardly and westwardly, except the fields; a wilderness all around covered with timber; the western part of the fields was grown up with timber; was open and not cultivated; only a portion of each field was cultivated on the east end, as much as they wanted for cultivation, some more, and some less; have heard of Catalara's road along the west side of common fields; heard it called Clamorgan's road or ford; there was a road there in Spanish times; don't remember Reihl to the west of the road. The fields were not called common fields in Spanish times, but were known among the old inhabitants by the name of "fields," ("des terres,") "cultivated lands," "park," "champs en pare," same as "fields." Gabriel Constant, jr., had a claim at the Belle Point. Knew Gabriel Constant, sr.; both called Lallamand; have heard of Gabriel Constant, sr., having a claim north of the river Des Peres, and between that and the fields Was present when Rector ran his lines; don't recollect exactly how long ago—about 30 years. It was common for one man to cultivate a field for a time and then go off, and for others to cultivate afterwards in succession.

Re-examined.

Don't recollect who cultivated on the Rondin tract; think Jos. Lunais was the next north of Mad. Rondin before the change of government. Recollect Julien Chouquette, C. Schultz, C. Valle, George Schultz, P. Delor, Fr. Ray, G. Constant, L. Menard, Fr. Fournier, Paul Robert, Chas. Robert, Sam. Lajoice, Jos. Menard, had fields before the change of government. Knew Mad. Constant, of old times; was wife of Gabriel Constant, sr.; there were three Gab. Constants. Gabriel Constant, sr., of 1825, was Gab. Constant, jr., of 1803. Old man sold his lot to his children after the change of government; he was dead in 1825; was called Lallamand. Gabriel Constant's field was where Jos. Walsh's is since. Never knew of Madam Constant having a lot in the common fields in Spanish times.

J. B. Pourcelle, witness for defendants.

J. Pierre Pourcelle, called by defendants.

I am 68 years old; was born in St. Louis, went to live in Carondelet 30 years ago, 4th October last; knew Carondelet before change of gov't, and since to this time. Did not know John B. Gamache, sen'r; knew the elm tree on the market square. At my earliest recollections

the village extended down to Jas. Guion's, and before the change of gov't knew that the inhabitants of Carondelet claimed commons.

Plaintiffs objected to his testimony in relation to [the] commons, before and since change of government; both objections overruled and exceptions taken.

They used a tract of land as commons for splitting wood, making hay, and cutting firewood, within the limits of what they called commons. Knew the boundaries; went to run the lines with Jos. C. Brown, in 1834; objected to, and exceptions taken.

They claimed commons in Spanish times as now; Brown began at a stone from the common fields and thence 150 arpens; where Brown ran his line we found a line of blazed trees, and I was directed to make new blazes on the same trees; there were people present from the town. Aug. Gamache was present; they believed those lines were run in their proper place, as claimed before the change of gov't. The lines are the same, west line and all around. There was timber there south of the common fields; saw no mark of cultivation below the fields; the timber has been since cut off as wanted. The sons of old John B. Gamache, sen'r, were John Baptiste and Auguste. I think both were present when Brown run the lines; Baptiste, and not Auguste, was there; they were citizens of Carondelet; there was a continuous line of houses from the elm tree to Guion's; some vacant lots; the Fournier's lot vacant; there were cross streets from E. to W. In Spanish times they sold lands all the time without deeds, between the Creoles, but the Europeans used papers.

Cross examined.

I went, in 1822, to live in Carondelet; went from St. Louis; had knowledge of Carondelet before I went to live there; I knew they sold lands without papers because it was the same at St. Louis, and everywhere; before I went there, don't know any special thing; being here was same as being there; there was a common field fence in front; there were no fences except that; all the country around was open and wilderness out of town; they cut wood and timber wherever it was not fenced; I never knew the lt. gov. to object to it, or interfere with them; had knowledge of commons before I went there, but did not know the precise spot or line. When I was a young man went to help Menard, and then heard of the commons; saw them going there, but did not see them cut wood; I was about 18 years of age then; it was the custom to cut wood and hay there when they needed.

Brown started at the last stone at the corner of the common fields; didn't know who put it there; think it was put there when Rector surveyed it. The hill back of the town makes a semi-circle round the village, from Mad. Hoffman's to just above Picot's house where it comes forward to Main st. making a basin; the village was in the basin, but below Picot's house on the river there were some houses. Remember Des Noyer's, Mad. Rondin; Alex. Marie was the last square on

the river; didn't know any below that; Fournier, Chartrand, Chonquette, Gay dit Gravois, Chas. Robert, and L. Courtois, sr., and jr., were next below the elm tree on the market square. L. Courtois, sr., was nearly opposite Picot's house; Gamache was down in the semicircular basin; Gamache's house was south of the elm tree on the same square. There was a bend in the shore of the river opposite Picot's house, turning round to the east, and makes an eddy; the beginning of the circle and eddy is a little above Picot's house; the bend makes an eddy. Can't say when John B. Gamache, jr., died; can't say whether it has been within twenty-five years. There were two Auguste Gamache's; the son is here present; John B. Gamache, jr., had a son, John B., jr.; three of them; this son died a few years ago. Did not hear any complaint or protestation when Brown made his survey; don't recollect any thing in particular about John B. Gamache, jr.; did not go to look for signs of cultivation within the claim of commons; never saw any below the common fields; I have heard of Tabatiere à Gamache since Brown's survey; knew where Paul Robert lives; the lot below him was known as Mad. Rondin's tract; have always heard of the Tabatiere à Gamache below that, and where Blow's house is, south of the common fields. Fournier married the widow of Lemai; have cut wood south of the common fields since I lived there. Did not know Gab. Constant, sr.; Gab. Constant, jr., had land at Belle Point.

Re-examined.

Mad. Rondin's is the lowest common field lot that I know of. There was a fence on Mad. Rondin's lot; Brown ran along that fence. Le Duc's lot was opposite Guion's house. Was 17 or eighteen years old when I first went down to Carondelet village. L. Courtois's house was on east side Main street, further north than Picot's house; the fence I speak of on Mad. Rondin's lot is that of Dr. Nichollet's, there now; don't know of any other fence before that; Dr. Nicolet's fence is 2½ arpens in front. When Brown's survey was made, the fence was further in on Paul Robert's line. Saw no other fence before that time on Mad. Rondin's lot; there was a front fence on the east side of the common fields, but no other; think I saw a fence east and west, on the south side of Mad. Rondin's, 15 years before I went to live in Carondelet; didn't know how far back it went. I did not go to look for signs of cultivation south of Mad. Rondin's tract.

Barada's Testimony.

Peter D. Barada, called by defendants.

I am 52 years old; born at Marais des Leaids; went to Carondelet to live in the fall of 1803; have been acquainted with the commons as far back as I can recollect; I recollect as far back as 1806 or 1807.

Plaintiffs objected to the testimony of the witness with regard to the commons. Overruled, and exception taken.

The extent of the village was down to Guion's lot, in block

No. 16. The elm tree is on block No. 10, or N. W. quarter. John B. Gamache, sr., lived there. In 1806 or '7 I was big enough to know the inhabitants. Am. Chartrand and Aug Gamache, sr., were on S. E. corner of same block—a cross street—then L. Menard; L. Courtois, jr., on same block, No. 11; L. Courtois, sr., on N. E. corner of block No. 12; next then Charles Robert, on block No. 13—in centre; Chonquette on S. E. corner of same block. Some years after, Fournier occupied ½ block in No. 14, across the street from Chonquette; Valle S. ½ of No. 14, in 1806–'7; Mad. Rondin's S. ½ of block 15. Don't recollect who occupied in block 16; Le Duc's lot was near centre of block No. 31; Motier, or N. E. corner of block 32; S. E. corner of block 32 had been occupied; that is, all the town there was below Mr. Picot's house; don't recollect any blocks below; there *was* pass-ways between those blocks above mentioned; when I first recollect Le Duc's and Motier's houses, they looked as if they had stood at least 20 years. Mad. Rondin's was [an] old house, and Valle's.

Commons; I have known of the village using a tract as commons.

Objected to, and exception taken by the plaintiffs.

They cut hay, rails, and firewood. Never knew that claim and use of the commons discontinued to this day. In 1806 I went with my father and cut pickets on the Gamache tract near Blow's house; the old people always claimed south of the river Des Peres as commons; only know from that; they claimed north of the Des Peres also. Never was present at any survey; the fact of Rector's survey was notorious; this tract surveyed by him was spoken of as what had been claimed in Spanish times. Subsequently they always used the tract as commons.

There were suits against trespasses in 1836. Objected to, and an exception taken by plaintiffs.

I was then justice of the peace. I recollect a small portion of Mad. Rondin's tract was under fence, a short distance back from the east line of the commons; a circular piece was enclosed as long ago as I can remember, in 1806; it began on Paul Robert's line, and bending south, taking in a portion of the Rondin tract, returned again further west to Robert's line, taking in a semi-circular piece, as marked by witness in pencil on plat Y, above referred to in this bill of exceptions, and then it ran along Paul Robert's south line as far back as the "ruisseau," or run, and no further west. There never was any fence on the south line of the Rondin tract running through from east to west line of the fields between the Rondin and Gamache claim; on the Rondin tract there was about an acre and a half in cultivation. I never saw any marks of cultivation south of Mad. Rondin's tract, except a small spot to the southeast of the "ruisseau," a run, and on the Gamache claim *where* there were marks of cultivation, but it had grown over with bushes, and was small, not more than an acre and a half; saw land there which had been cultivated within this claim. I was told that Mad. Hunot was killed there a little to the southeast of the run; and he marks on the plat attached to said deposition of Wm. Moss, in pencil, the spot where he was told by old people Mad. Hunot was

killed, as above. Knew the line of the common fields; the land below, except the small spot above mentioned, was all timber since I recollect it. I have myself, with my father, cut pickets on the land below Mad. Rondin's, near Mr. Blow's house, on the Gamache claim.

The commons south of the river des Peres was sub-divided into lots by De Meyer in 1837 or '8. The plat of De Meyer is shown him.

The plaintiffs objected to the competency of this evidence, but not to the authentication of the copy; the objection was overruled and the evidence submitted, and exception taken; and it is agreed that said plat, in the hands of the defendants' counsel, may be shown in the supreme court, without being more fully set forth herein. It bears date in 1837–'8.

The lots so subdivided were leased in 1839 by the town of Carondelet to various persons; subdivision survey No. 1, by Mackay, was made afterwards, and the lots leased to individuals. Subdivision survey No. 2, by Mackay, was made after that of No. 1, and the lots Nos. 33 and 34, of survey No. 2, lie on the hill west of Blow's house. Piquignot went into possession after the leasing. These lots of Piquignot, in 1806 or '7, were covered with timber and bushes. The timber has all been cut off by the inhabitants since that date, and as much as ten or fifteen years ago all the land around and down to the river Des Peres was covered with timber, and it has been used for cutting timber to some 10 or 15 years ago.

Cross examined.

Explains on the plat. Gamache's house and the elm tree were on block 10. The Gamache claim, as surveyed and represented on the plats, coming to the river between blocks Nos. 12 and 16, and cutting into a little of each of these blocks, strikes the river just at [the] beginning of the bend of the shore, and at the head of the eddy. It is two and a half squares, between Gamache's house at the elm tree and the north line of the Gamache survey; and it is about 300 yards from Gamaches' house to old man Gravois' lot, within the Gamache claim.

In 1806 or '7, the fence ran for a little distance from the front line of the fields, between Rondin and Robert's; then round a semi-circular piece on the Rondin tract, and back to Robert's line; thence along his line to the ravine, and west of the ravine; there was no fence, but the whole western part of the fields was covered with timber and bushes; and the west end of some of these fields *are* still covered with timber and open. The inhabitants respected the fields in cutting wood and timber. There was never a fence on the south line of the Rondin tract that ran the whole length of the fields, but it was considered a field lot. I have heard of the Tabatiere a Gamache, when the survey of it was made. Recollect Gamache as a decrepit old man. He had his coffin in his house before he died. I am an inhabitant of Carondelet. Knew John B. Gamache, jr., son of John B., sen'r. He died

in 1827 or '8, some three or four years, at least, before my father died in 1834. He died in Carondelet.

Re-examined.

Pritchart occupied a tract south of the river Des Peres, in the commons under his lease from the town.

Dunn leased from the inhabitants of Carondelet, and occupied 6 or 7 years, as long ago as 1814; died in 1819–'20, not positive. Knew his handwriting on the paper shown him; the land numbered in the lease is within the commons. I have heard that Mad. Hunot worked there where I saw marks of cultivation below Mad. Rondin's lot; and that she was killed near the spot above mentioned, a little southwest of the run. My father showed me where she was killed, as pointed out above in the plat.

Adolph Renard, called for deponents.

I have been recorder of land titles of Mo. since 1847; before that was a clerk in the surveyor general's office since 1837.

The diagram above spoken [of] by M. L. Clark is shown him. The original diagram is one supposed to have been used by Hunt to show the relative position of the lots proved before him. The numbers on this diagram correspond with those numbered in Hunt's minutes, and are different from any other plats known to me.

I found it in the recorder's [office] when I took charge of it. It is not a part of any records of the office, and has no official character. It is not in Hunt's handwriting, except some notations on it which I believe are in his own handwriting. Don't know in whose handwriting the rest of it is. It is a mere sketch, and has no official character. Objected by plaintiffs, and their objection is sustained, and the diagram, original and copy, is excluded, and an exception taken by the defendants.

The practice in the surveyor general's office in regard to claims proved before Hunt was, that the recorder returned a list of the claims proved to the surveyor general to be surveyed according to calls of the claims as reported then and after Hayward's instructions in 1831. The surveyor general certified the surveys of these claims to the recorder, who issued the certificate of confirmation with the survey attached to or referred to in it. The Gamache claim was not in Hunt['s] first list returned in 1827, but was returned to the surveyor general to be surveyed in 1839 by Recorder Conway.

Looks at the connected plat of the common fields of Carondelet attached to said deposition of Moss, and says that the small letters put on the copy by Mr. Clark for reference thereto in his certificate on the back of the same, a, b, c, f, were put on this copy by Mr. Clark to indicate what he considered as the common fields as now understood, in his office. They are not on the original plat.

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as

No certificate has been issued to the legal representatives of Jno. B. Gamache, jr., since survey No. 120 was made.

Hayward's instructions have been generally followed in the office since received. Before that time certificates were issued by the recorders on this class of claims without any survey. I have seen some of them.

There are no other records in relation to these claims except Hunt's minutes and the registry of certificates, and there is nothing in the office to indicate that Hunt rejected this claim of Gamache except that it was not contained in his first list, or that he confirmed the same. I am acquainted with the French and Spanish languages and the French and Spanish archives of the public offices. The term Common Fields is of modern and American origin, and is not used in the French and Spanish archives relating to land claims. They are spoken of in all French and Spanish documents as "fields," "lands," or "cultivated lands."

I am translator of the court, and the papers shown me, marked Ex. T, is a literal translation of the petition in behalf of the inhabitants of Carondelet, signed by Jno. B. Gamache, senior, to Lt. Gov. Trudeau, as above mentioned in the bill of exceptions. Several supplementary lists have been returned since that of Hunt's in 1827, and the claims thus returned and surveyed have been acted upon by the recorder as others.

Confirmation of commons.

The defendants then offered in evidence a paper purporting to be a certificate of confirmation, by the recorder of land titles of Missouri, of the commons of Carondelet, as follows, to wit:

(This paper not found among the papers of the cause, nor finished by the counsel. Note 2d. This is the same paper copied on pages 56, 57, and 58 of this transcript. Clerk.) To the admission of which the plaintiffs objected, and the same was excluded by the court, and an exception taken by the defendants' counsel.

Ex. V.—Hayward's instructions.

The defendants then offered in evidence a certified copy of Hayward's instructions of 1831 from the office of recorder of land titles, as follows, to wit:

(This paper not found among the papers in the cause, nor furnish[ed] by counsel.) To the admission of which the plaintiffs objected, and their objection was overruled and an exception taken; the same was read.

Ex. W.—Leases to Davis & Powell.

The defendants then offered in evidence a lease from the corporation of Carondelet to Davis & Powell, dated July 4, 1833, of lots in the commons south of the river Des Peres, to the admission of which the plaintiffs object, and their objection is overruled and an exception taken;

and it is agreed, that the said lease in the hands of the defendants' counsel, marked Ex. W, may be referred to in the Supreme Court without being more fully [set] forth herein.

Carondelet ordinances.

The defendants then offered in evidence certified copies of eleven ordinances of the corporation of Carondelet, of various dates between 1832 and the present time, passed for the purpose of authorizing the subdivision and leasing of the commons of Carondelet, to prevent the cutting wood and timber on the commons, and to punish trespassers on the commons; to the admission of which the plaintiffs objected, and their objection was overruled, and an exception taken; and it is agreed by the parties, that the said eleven copies, numbered and marked ordinances Nos. 1 to 11 inclusive, in the hands of the defendants' counsel, may be referred to in the Supreme Court without being more fully set forth herein.

Act of Legislature to lease.

The act of Legislature of Missouri of 1839, authorizing the inhabitants of the town of Carondelet to lease their commons, and entitled "An act approved " is read in evidence, and objected [to,] and an exception taken by the plaintiffs; and it is agreed, that the same may be read from the statute book in the Supreme Court.

Ordinance of Carondelet to lease to Pritchart.

The defendants also offered in evidence an ordinance of the corporation of Carondelet authorizing a lease to Jesse Pritchart of a lot in the commons south of the river Des Peres, passed on the , to the admission of which the plaintiffs objected, and their objection overruled, and an exception taken; and it is agreed, that the certified copy of the same in the hands of the defendants' counsel may be referred to in the Supreme Court without being more fully set forth herein.

Here defendants close their case.

Rebuttal.

The plaintiffs then in rebuttal called Zeno Mackay, who testifies:

Mackay's testimony.

That he is 51 years of age, has lived all his life in this neighborhood, and has followed the business of a practical surveyor. Survey No. 120 on the connected plat aforesaid, attached to said deposition, is shown him, and says he has run the lines of the Gamache claim, following the field notes of Brown's survey thereof, except that portion which goes within corporation; and that he knows the land and the country around about, and is familiar with ground and the surveys in that neighborhood. Knows the two lots Nos. 33 and 34, about halfway

back in the middle of the Gamache tract; they were in possession of defendant Piquignot when I made my survey of it in 1848 or thereabout; Piquignot had two small houses on it, and five or six acres grubbed and fenced in. All the rest was open ground covered with bushes, and the land around it and down to the river Des Peres was then open and covered with bushes.

I have been a surveyor 30 years. I made subdivision survey No. 2 of the commons of Carondelet in 1843, I think, and at that time the whole of the Gamache tract as surveyed as above stated west of 4th street of the village, except perhaps a brick yard in the west side of 4th street, was open country and all covered with bushes and timber; it was all unoccupied by any one, and had been open and unoccupied before that time as far back as I can recollect, which is about 1810—except that since 25 or 30 years ago one Motier had a small quarry on it near the ravine and burned lime. Lots 33 and 34, from 1810 down to the time when Piquignot took possession after 1843, were open and wild woods. There are still open woods above this tract on the west end of the common fields.

I have measured over Soulard's line of 23 arpens and 3½ perches at the request of the plaintiffs in this case. I went to the back line of the common fields, ascertained the bearing to be the same as Soulard's survey, and ran the line dow[n] to the river Des Peres to the high bank of the river; saw a blazed line on that course; there is a lower bank and there is fifty links difference. I the[n] measured back on that line from the high bank 23 arpens and 3½ perches, Soulard's distance, and found it to come up into the west line of the common fields and to about the middle of the lot of Charles Robert, sur. No. 119 as marked on this plat (being Mackay's plat of his measurement marked Ex. Z.) This plat contains the data of my measurement, and the courses and distance and lines are correctly laid down and marked thereon.

There never was any fence within my recollection on the south line of the Mad. Rondin's tract and between that and the Gamache claim. There was an old fence which began on the south line of the Robert tract (sur. 119) a little back from the front line of the common fields, and running round some bad ground on the Rondin 2½ arpens tract, crossed the Rondin tract and went a little over the south line of it into the Gamache claim a short distance, and then turning back crossed the Rondin tract towards the west till it struck the south line of the Robert tract again, and thence followed along the south line of that tract as far west as the ravine and no further. The land to the west of that was always open and covered with bushes and timber as far north in the fields as to the line between Menard and Delor tracts west of the ravine, where there was a fence running westward from the run between Menard and Delor to the west line of the common fields. I knew these fences as long ago as 1810, and never knew any other till lately. I have heard of the "Tabatiere à Gamache" a great while, as long ago as I can remember. Some 10 or 15 arpens of the Rondin tract were included in that fence near the east end—marks the fence

above mentioned, marked Ex. Y. of the lower common fields in pencil. Where the Gamache survey comes to the river between blocks Nos. 12 and 16 of the town is at the beginning of the bend in the shore and opposite the head of the eddy in the river.

Cross examined.

The timber on this tract and north of the river Des Peres has been cut; don't know that the inhabitants cut it under a claim of commons. The board of trustees employed me to subdivide the commons. The inhabitants claimed west and south to the Rector's lines. I don't know of their claiming up to the north line, or anything of Rector's north line. Since I recollect, they claimed commons north and south of the river Des Peres; as far back as I recollect they worked in the timber west of the river Des Peres and afterwards went south to cut wood, &c.; commenced crossing as early as 1820; they could go anywhere to cut hay and wood, and went into the Alvarez tract. They exercised the right of commons by cutting wood and timber north of the river Des Peres. Dunn was in possession of a tract in the commons south of the river Des Peres and built a mill, and the town of Carondelet had a suit with him to drive off, in 1818 or 1820.

Re-examined.

There was no fence on the west line of the common fields below Delor's tract; north of that and back of what are called the big fields there was a fence, but none back of the common fields; there it was all open and is most of it to this day. They had fields fenced in on the east ends of their lots. Jno. B. Gamache, jr., son of the elder Gamache, died about 25 years ago.

Auguste Gamache, witness for Plaintiff.

Auguste Gamache called by Plaintiffs.

Knew John B. Gamache, jr., my uncle. Aug. Gamache, sr., son of Jno. B. Gamache, sr., and brother of John B., jr., was my father. I am 55 years old; recollect as far back as when 8 or 10 years old and some things before; recollect John B. Gamache, sr., my grandfather; John B. Gamache, jr , my uncle, died about 25 years ago. I have always heard of the Tabatiere a Gamache; have heard old citizens and my father say that there was another field south of the Mad. Rondin's tract and before coming to the commons called the "Tabatiere a Gamache" where my grandfather had his tobacco field and where he raised tobacco, and that Mad. Hunot worked there with my grandfather, and was killed coming home to the village from work by a mulatto man at that place. My father showed me the place, and where Mad. Hunot was killed, a little this side of the "Tabatiere;" what was called commons was below the "Tabatiere a Gamache."

3143.

Cross examined.

I have heard of Rector's survey, but was not there when it was made; know the lines of the claim of commons; the inhabitants have always claimed it as commons and cut wood and hay on what they called the commons.

My uncle, John B. Gamache, jr., had a son, John B., jr., who died some 5 or 6 years ago; was a man in 1834; would be a man about 64 years old; was older than me.

The meaning in English of "Tabatiere" is literally "Snuff Box." "Tabatiere a Gamache" means "tobacco field," a plantation where he raised tobacco. My father told me that my grandfather raised tobacco there, and so it was called Tabatiere a Gamache, or Gamache's tobacco field. I recollect something of the old village at change of government, like a dream; there were old houses extending below Gamache, I think old houses.

The plaintiffs then offered and read in evidence the literal translation of the Gamache petition spoken of in the testimony of Mr. Renard as follows, to wit:

Ex. T.—Jean B. Gamache's petition to Lieut. Governor Trudeau.

To Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant and commander-in-chief of the western part of Illinois.

The deplorable situation in which the village of Carondelet is about to fall, now and hereafter, through the exportation of wood, [he] has the honor to set forth that, after the petition which he had the honor to present to you the 5th October last, to obtain the continuation of their land, you told them that you could not grant his demand; that, however, you would make your efforts to give them forty arpens above their park. The village prays you to be willing to turn your attention to the fact, that it has a great inducement on account of their mill, and that it is its intention to sow with grain as much land as it is possible for it to do; therefore it charges Mr. Gamache to present you this, hoping that you will, sir, be pleased to take into consideration his (its) demand, and the misery in which it (he) is about to be plunged, and grant it (him) the continuation of a land, taking for bound[ary] that of Mr. Constant at (to) the Mississippi, and the river Des Peres for limit coming to the village of Carondelet. It (he) hopes every thing from your goodness, and believes that you will grant its (his) demands; he (it) will not cease to be thankful for your goodness.

At the village of Carondelet, the 6th October, 1796.

his
JEAN BTE. ⋈ GAMACHE.
mark.

Book B., pp. 195 and 196.

Deed from A. Gamache, jr., to J. B. Gamache, jr.

The plaintiffs then offered and read in evidence [a] certified copy of the record of a deed and acknowledgment, from Auguste Gamache, jr., and wife, to his brother, John B. Gamache, jr., son of John B. Gamache, sen., dated 27th February, 1819, and recorded in book U, 161, of all his title, interest, claim, and demand, of and to [a] tract of land therein described, as follows, to wit: "a certain tract of land known by the name of La Tabatiere a Gamache," ("Gamache's tobacco ground or field;") certified copy whereof, marked Ex. (A,) in the hands of the plaintiffs' counsel, it is agreed by the parties, may be referred to in the sup. court without being more fully set forth herein.

Mackay's plat.

The plaintiffs offered in evidence, and showed to the jury, Mackay's plat and data of measurement of Soulard's line, spoken [of] in the testimony of Zeno Mackay; which plat, marked Ex. (b,) in the hands of the plaintiffs' counsel, it is agreed by the parties, may be referred to in the sup. court without being more fully set forth herein.

[For plat see original, page 102.]

The plaintiffs offered and read in evidence certified copies from the office of surveyor general of the State, at St. Louis, of four letters:

One from the Commissioner of the General Land Office to the Surveyor general, dated the 24th September, 1839;

One from the Secretary of War to Brig. Gen. Atkinson, dated the 16th November, 1840; and,

One from the Secretary of War to the Commissioner of General Land Office, dated the 18th November, 1840; and,

One from the Commissioner of General Land Office to the surveyor general, at St. Louis, dated the 20th January, 1841.

Which four letters are as follows, in their order, to wit:

Ex. (C).—Letter from the Commissioner General Land Office to Milburn, Surveyor general.

GENERAL LAND OFFICE, *Sept. 24th*, 1839.

SIR: A plat of a survey, No. 3,120, certified by you on the 20th May last, of the commons of Carondelet, as surveyed by Jos. C. Brown, deputy surveyor, in March, 1834, with your communication of that date to Arthur L. Margenis, esq., United States district attorney, and a transcript from "page 6 of Registre d'arpentage, St. Louis, A," have been *recovered* at this office, with a letter of the 22d June last from the Secretary of War.

The subject is brought to the attention of this office by the Secretary

3144.

of War, with a view, as appears from his communication, that this office should "take measures to sell the land included within the lines marked with red on the accompanying plat, (the plat above referred to,) from the river Des Peres south, claimed as commons by the village of Carondelet, but believed to belong to the United States." In that communication it is also stated, "that the military reservation desired for the United States around the fort at Jefferson Barracks will be designated, whenever the Land office is prepared to sell the residue of this tract of land."

On this subject I herewith enclose a copy of a report, No. 244, of the *sobalor* of this office, in which you will perceive that it is of opinion that Brown's survey, within the lands of which are six private claims, "includes several thousand acres to which the village of Carondelet has no legal or equitable title;" and "if such is the fact there is no objection to a survey and sale, as public lands, of all that part of the tract not needed for military purposes, or covered by private claims; indeed, that is the proper course to pursue." That instructions should be given "to the surveyor general to have the survey executed as required by law," (act of 13th June, 1812, page 216, part 1st, Laws and Instructions, &c., to which the acts, chaps. 311 and 406, are supplementary,) "viz., to retrace the exterior of the village, including the village lots, common field and out lots, and commons, giving the villagers the same lines which they had in 1803, and no more, unless, prior to the act of 1812, the corporate limits had been fixed and extended beyond the limits of 1803, and, after laying down the private claims, to section and subdivide the residue and return the official plats;" that the "surveyor general should refer to the ancient maps and title papers in his and the recorder's office, and from them ascertain what were the exterior lines," &c.

Concurring in the views of the solicitor, as stated, I request that you will make a thorough and careful examination into the whole matter, in order to determine the limits of the commons of Carondelet to which the villagers are legally entitled; and that you will cause a survey to be made accordingly, and that such land as may not be found to be within the limits of the commons aforesaid, or covered by private claims, may be surveyed as private lands, and plats of the same duly returned. You are requested to make a detailed report of all your proceedings, accompanied by copies of all the papers or record that you may be able to find having a bearing on the claim in question, with a diagram, exhibiting the limits of the commons according to the evidence of title.

Very respectfully, your obedient servant,

(Signed) JAS. WHITCOMB, *Comm'r.*

WILLIAM MILBURN, Esq.,

Surveyor general, St. Louis, Mo.

OFFICE OF THE SURV'R GEN'L FOR ILL. AND MO.,
St. Louis, December 31, 1850.

I certify that *that* the foregoing is correctly copied from the original letter of the Commissioner of the General Land Office to General Milburn, of the 24th September, 1839.

M. LEWIS CLARK,
Surveyor general.

(Copy.)

WAR DEPARTMENT, *November* 16*th*, 1840.

SIR: I transmit herewith a copy of a letter from the acting commissioner of the General Land Office, of the extract from the report of the solicitor of that *of that* office, and of the plat X referred to by the acting commissioner. You will perceive that this office confirms the report of the solicitor, and that the latter is of the opinion that the village of Carondelet has no legal claim to the land called the common of that village, but that it has no strong or equitable claim to a part of it. Congress will probably sanction a part of it; and he advises that a portion of it which he designates be reserved for the future action of Congress. The part thus recommended to be reserved would allow 5,104.20 acres for a common for the village of Carondelet, which is the extent of its claim, and 1,702 as a site for Jefferson Barracks and for military purposes connected with it. You will please cause this latter quantity to be laid in such directions as would be most useful to that part and as would answer for the gener ! military purposes connected with it; and you will cause a plat to be made of it and forward to this office as early as practicable.

Very respectfully, &c.

(Signed) J. R. POINSETH.

Brig. Gen'l H. ATKINSON,
Jefferson Barracks, St. Louis, Missouri.

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, Dec'r 31, 1850.

I hereby certify that the above is a true copy of the *copy of the* original, transmitted to this office by the Commissioner of the General Land Office in his letter of the 20th January, 1841.

M. LEWIS CLARKE,
Surveyor General for Illinois and Missouri.

(Copy.)—*Secretary of War to Commissioner of General Land Office.*

WAR DEPARTMENT, *Nov'r* 18, 1840.

SIR: I return you the plat of the Commons of the village of Carondelet which accompanied you[r] letter of the 11th instant, and for the information of your office I enclose you a copy of the instructions given to General Atkinson to lay off and transmit a plat of that part of

the tract embracing 1702 acres which the solicitor of your office is of the opinion may properly be retained for military purposes.

As soon as the plat shall have been received from General Atkinson a copy of it will be furnished to you.

Very respectfully, your most obedient servant,

(Signed) J. R. POINSETH.

JAMES WHITCOMB, Esq.,
Com'r Gen'l Land Office.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, ST. LOUIS, *December* 31, 1850.

I hereby certify that the above is a true copy of *copy of* the original, transmitted to this office by the Commissioner of the General Land Office in his letter of the 20th January, 1841.

M. LEWIS CLARK,
Surveyor General.

Ex. (f.)—*Letter from the Commissioner of General Land Office to W. M. Milburn.*

GENERAL LAND OFFICE, *January* 20, 1841.

SIR: In relation to the claim of the village of Carondelet, in Missouri, to a tract of land called the commons of that village within which the military post of Jefferson barracks is situated, I herewith enclose for your information a copy of report No. 300 of solicitor M. Roberts, and a copy of a communication of the 18th November last from the Secretary of War, with a copy of his letter of the 16th of the same month to Brigadier General Atkinson at Jefferson barracks.

You will perceive that the solicitor advises, "that the tract of land beginning on the Mississippi river at the figure laid down upon plat X, (which plat accompanied your report of the 15th April last,) and near the northeast corner of Martigny's survey; thence with the black dotted line to *d*; thence with said line to river Des Peres, and up the river to the line of Alvarez survey, and across the river to letter *e*; and from said letter *e* to *c*, and on to the river, with the present survey, be reserved for the future action of Congress;" and remarks that, by making this reserve, Congress can grant the 6,000 arpens, ("all the inhabitants claimed, which is $5{,}104\frac{2}{100}$ acres, excluding all private claims,") "to the village of Carondelet for a common, or in such manner as may be deemed proper; and can retain of the public land 1,702 acres as a site for Jefferson barracks, or for any disposition that may be judged expedient." He further advises, "that the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys, and which amounts to several thousand acres, be surveyed and sold as public land."

Concurring in this report, I have addressed a communication to the honorable Secretary of the Treasury, with a view of having the matter brought to the attention of Congress, for such action as may be deemed

proper in the way of making a grant to the village of Carondelet, &c.; in the mean time you are requested to represent on your records the tract within the limits suggested by the solicitor, and referred to in the foregoing as lands reserved for the purpose alluded to; and "the balance of the unappropriated land without those limits, and included in Rector's and Brown's survey," you are instructed to have surveyed as public lands, to the end that the same may be duly brought into market as such.

Very respectfully, your obedient servant,

(Signed) JAMES WHITCOMB,
Commissioner.

WM. MILBURN, Esq.,
Surveyor general, St. Louis, Missouri.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *St. Louis, December* 31*st*, 1850.

I certify that the foregoing is correctly copied from the original letter of the commissioner of the General Land Office to General Milburn, of the 20th January, 1841.

M. LEWIS CLARK,
Surveyor general.

All in relating to Jos. C. Brown's survey of the commons of Carondelet.

The plaintiffs then offered and read in evidence a letter from the Secretary of the interior to Messrs. N. & S. A. Holmes, dated the 16th October, 1851, in relation to the appeal taken to him from the com'r, in the case of the legal representatives of Gamache, as follows, to wit:

Exhibit (G.)—Secretary of Interior to N. and S. A. Holmes.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 16, 1851.

GENTLEMEN: I have to acknowledge the receipt of your letter of the 27th ult., calling my attention to the case of the representatives of Gamache, and asking that a decision may be had in the matter in time to be used at the November term of the circuit court of St. Louis. If it be practicable, amid the pressure of other public business consequent upon the near approach of the session of Congress, to dispose of the case as early as you request it, it shall be done.

I am, gentlemen, very respectfully, your obedient servant,

ALEX. H. H. STUART,
Secretary.

N. & S. A. HOLMES, Esq., St. Louis, Missouri.

Here the plaintiffs closed their case in rebuttal; and the above is all the evidence given on either side.

The plaintiffs then asked the following instructions, which were given by the court, as follows:

Instructions given for plaintiffs.

1. If the jury believe, from the evidence, that Jno. B. Gamache, sen'r, was an inhabitant of the village of Carondelet prior to the 20th day of December, 1803; that he claimed and inhabited, cultivated or possessed, prior to that date, the tract of land described in the declaration in this case as an out lot, or cultivated field lot, adjoining or belonging to said village, they will find for the plaintiffs for that portion of that tract which is embraced in lots No. 34 and 33, except sixty-six feet in width on the south side of said lot No. 33 of Mackay's subdivision, survey No. 2.

2. The jury are instructed that inhabitation, cultivation, or possession of a part of a lot claiming the whole, is in law an inhabitation, cultivation, or possession of the whole lot claimed, within the true meaning and intent of the act of Congress of 13th June, 1812.

The jury are instructed that the defendants have given no such evidence of adverse possession of the land in controversy in this case, for twenty years prior to the commencement of this suit, as is sufficient in law to constitute an adverse possession that can bar this suit under the statute of limitations; provided the jury also believe that the tract of land in the declaration mentioned was claimed and inhabited, cultivated or possessed, as an out lot, or cultivated field lot, of said village of Carondelet, by John B. Gamache, sen'r, prior to the 20th day of December, 1803.

To the giving of which instructions the defendants, by their counsel, excepted.

The plaintiffs also asked the following instructions, which were refused by the court, as follows, to wit:

Instructions for plaintiffs refused.

3. The jury are instructed that, as against such a claim and cultivation, or possession, as that mentioned in said second instructions, no adverse user as commons as a ground of title, under the act of Congress of 13th June, 1812, can prevail, unless such user existed in fact by an actual occupation and use as commons of the same ground, visible and continued notorious, hostile, and exclusive, [and then] only to the extent that such actual occupation and use as commons existed in fact, and to the exclusion of such claim and cultivation, or possession, by Gamache, of the same land as an out lot, or cultivated field lot, of the village, prior to the 20th day of December, 1803; provided the jury also believe, from the evidence, that the tract of land in the declaration described was claimed and inhabited, cultivated or possessed, by John B. Gamache, sen'r, prior to the 20th day of December, 1803, as an out lot or cultivated field lot of said village, with such a cultivation or possession as that mentioned in the said second instructions for the plaintiffs.

4. If the jury believe, from the evidence, that the claim of the village of Carondelet to commons, prior to the 20th day of December, 1803, was bounded north (in part) [by] the cultivated lands of the village, and that, prior to said date, the lot of land in said declaration described as having been claimed by Gamache was one of the cultivated lands of the village, then there is no conflict of title in this case, and the defendants have shown no title to the land in controversy.

5. The jury are instructed that, on the evidence given in this case, the statute of limitations is no bar to this action, unless they shall believe, from the evidence, that the town of Carondelet, or those holding under said town, have had an adverse possession in fact of the land in controversy in this case by an actual occupation on the ground, visible and continued notorious, hostile, and exclusive for at least twenty years next preceding the commencement of this suit.

7. The jury are instructed that the survey No. 120, and the plats and field notes thereof given in evidence by the plaintiffs, are evidence of the true location, extent, and boundary of the out lot of the village of Carondelet, claimed, under John B. Gamache, sen'r, by his legal representatives.

8. The certified extract from the minutes of Recorder Hunt, taken under the act of Congress of 26th of May, 1824, *are* [is] evidence that the tract of land therein mentioned and described was claimed and inhabited, cultivated or possessed, by John B. Gamache, sen'r, prior to the 20th day of December, 1803, and evidence that the same was confirmed to John B. Gamache, sen'r, or his legal representatives, by the act of Congress of 13th June, 1812.

9. The certified extract from [the] registry of certificates from the recorder's office, offered in evidence [by the plaintiffs, is evidence] that the out lot therein mentioned was confirmed to John B. Gamache, sen'r, or his legal representatives, by the act of 13th June, 1812.

10. The certified extract from the list of claims transmitted by the recorder of land titles to the surveyor general, and certified from the office of the surveyor general, relating to the claims of the legal representatives of John B. Gamache, sen'r, is evidence of said claim and the extent and boundary thereof, and that the same was confirmed by the act of Congress of 13th June, 1812.

11. The certificate of confirmation of the recorder of land titles in *Mo.*, given in evidence by the plaintiffs, shows a prima facie title from the United States, in the legal representatives of John B. Gamache, sen'r, to the land therein described.

To which decision of the court, refusing said instructions, the plaintiffs by their counsel excepted.

The defendants then asked the following instructions, which were given by the court, as follows, to wit:

Instructions given to defendants.

5. If the jury find that the land spoken of by the witnesses as ac-

tually cultivated and possessed by Gamache did not embrace the land now in dispute, they ought to find for the defendants.

17. The survey No. 120, read by the plaintiffs, is no evidence of title, nor of the extent and boundaries of Gamache's claim.

18. The testimony taken before Hunt, and read in evidence by the plaintiff, is not to be regarded by the jury in the present case, the defendant not insisting that the claim had been abandoned.

To the giving of which instructions the *defendants* [plaintiffs] by their counsel excepted.

The defendants also asked the following instructions, which were refused by the court, as follows, to wit:

1. That there is no competent evidence before the jury that John B. Gamache inhabited, cultivated, or possessed an out lot of Carondelet prior to the 20th day of December, 1803, and the jury ought therefore to find for the defendant.

2. There is no competent evidence before the jury that the premises claimed by Gamache prior to the 20th day of December, 1803, comprised the land now in controversy, and the jnry ought therefore to find for the defendants.

3. There is no legal evidence before the jury of the possession, inhabitation, or cultivation by Gamache of any land prior to 20th December, 1803, except what is contained in the deposition of William Moss.

4. If the jury find from the testimony of William Moss that the land spoken of by him was contained within the common field of Carondelet, they ought to find for the defendant.

6. The verbal claim made by Gamache of 4 by 40 arpens, as testified by Moss, would not be confirmed by law to Gamache, unless he actually inhabited, cultivated, or possessed the whole of the same prior to 20th December, 1803.

7. If the jury find that the petition by Gamache, read in evidence, of date of 7th December, 1796, the answer of Trudeau thereto, and the survey of Soulard, are all genuine; that the premises in controversy are within said survey of Soulard, and also the survey called Rector's and Brown's, then the title thus acquired by the inhabitants of Carondelet to the disputed premises is superior to the title of the plaintiffs shown in evidence, and the jury ought to find for the defendants.

8. If the jury find that the survey known as Soulard's was made in 1797, that the same was run from the southwest corner of the common fields to the river Des Peres, in order to mark the western line of the commons, and that the inhabitants of Carondelet claimed the land within such lines and to the common fields, and used the whole or parts thereof as commons until the 13th day of June, 1812, then the land embraced by the lines of Soulard's survey, the Des Peres and common fields was confirmed to said inhabitants as commons, and the plaintiffs cannot recover in this action.

9. If the jury find that a survey of the large tract of land in the Carondelet commons, embracing the land in controversy, was made by

Rector under the authority of the United States, and that the corners and lines of such survey were marked by visible monuments on the ground as early as the year 1817, and that the inhabitants of the town of Carondelet from that time forward claimed the land embraced in such survey as their commons, and for more than twenty years next succeeding the 17th day of December, 1818, and up to this suit actually used the said land as commons, by felling timber and making hay thereon, and claiming the same up to the lines of said survey, and prosecuting persons for trespasses thereon, the plaintiffs are thereby barred of their right to recover in this action, and the jury will find for the defendants.

9½. If the jury find that in the year 1797 a line was run to mark the limits of the Carondelet commons, that from that time down to the commencement of this suit the land laying within the limits of such survey has been continually claimed as a part of the commons aforesaid, and has been in the use and occupation of the inhabitants of Carondelet or those claiming under them, then the plaintiffs cannot recover in this action.

10. It is not necessary in the present case for defendants to show that the inhabitants of Carondelet have used and occupied the particular land in controversy as commons for 20 years or other period of time; it will be enough to show a continued user as commons of the tract by exercising notorious acts of dominion over its parts, along with a claim up to its limits as surveyed and marked on the ground.

11. If the jury find that the lot claimed by Gamache did in fact embrace a part of the Spanish village of Carondelet, then the same was not an out lot, and the plaintiffs have no right to recover.

12. If the jury find that Gamache settled upon and cultivated his lot as a mere squatter without the authority or permission of the Spanish authorities, then he had no such claim as was confirmed by the act of 13th June, 1812.

13. The answer of Trudeau to Gamache's petition of 7th December, 1796, is evidence tending to show that Gamache had no rightful claim to an out lot south of the common fields.

14. The jury are instructed that the survey No. 120 of the lot of 6 by 40 arpens under the claim of Gamache's representatives, given in evidence by plaintiffs, was made not in pursuance of any law, that it was an act void from the beginning, and it is no evidence of the extent or locality of the lot claimed by plaintiffs in this action.

16. The act of 13th June, 1812, and the official survey read in evidence, known as Brown's survey, constitute a title in the inhabitants of Carondelet to the land embraced in the survey as effectual as a patent.

15. The lots confirmed by act of 13th June, 1812, were lots defined by actual survey or by grant, permit to locate, or other act of law, or lots to which custom had given certain defined shape and extent, or lots of which the boundaries were defined by actual occupation, inclosure, or other visible bounds.

3148.

19. The court is requested to explain to the jury, by instructions, what constitutes an out lot or cultivated field lot, as mentioned in the first instruction moved by the defendants.

20. The court is requested to explain, by instruction to the jury, what facts and circumstances will constitute a *claim* to an out lot or cultivated field lot, as mentioned in the first instruction moved by defendants.

21. The court is also *instructed* to explain, by instruction to the jury, what facts and circumstances will amount to a claiming of a lot, as mentioned in the second instruction moved by defendants. To which decision of the court refusing said instructions, the defendants by their counsel excepted.

And thereupon, the jury found their verdict aforesaid for the defendants on the 26th day of February, 1852, and on the next day thereafter the plaintiffs filed their motion and reasons for a new trial of said cause, as follows, to wit:

In the St. Louis circuit court, November term, 1852.

Louis D. Gamache and others
vs.
Francois X. Piquignot and the Inhabitants of the town of Carondelet.

And now, at this day, come all the said plaintiffs, by their attorneys, N. and S. A. Holmes, and move the court here to set aside the verdict of the jury aforesaid, and grant them a new trial of the said cause for the following reasons, to wit:

1st. Because the court erred in excluding from the jury the documentary evidence of title, and other competent evidence and testimony offered by the plaintiffs.

2d. Because the court erred in refusing the instructions asked for by the plaintiffs, and not given.

3d. Because the court erred in giving instructions asked for by the defendants.

4th. Because the court erred in admitting evidence to the jury offered by the defendants, and objected to by the plaintiffs.

5th. Because the court erred in admitting evidence offered by the defendants to go to the jury, which was afterwards instructed out by the court.

6th. Because the court erred in instructing out evidence offered by the plaintiffs, and admitted to go to the jury without objection from the defendants.

7th. Because the verdict was against law and the instructions of the court.

8th. Because the said verdict was against the evidence and the weight of the evidence.

9th. Because the verdict was against the law and the evidence.

N. & S. A. HOLMES,
Att'ys for plaintiffs.

Which said motion thereafterwards being fully heard and *and* considered by the court, the same was overruled; to which decision of the court the plaintiffs, by their counsel, excepted, and prayed the court to allow sign and seal [to] this their bill of exceptions, which is done by consent of parties this 19th day of March, A. D. 1852, and the same *ordered* upon the records.

A. HAMILTON, [L. S.]
In pro. pa.

THE STATE OF MISSOURI,
County of St. Louis, ss.

I, Michael S. Cerre, clerk of the circuit court, within and for the county of Saint Louis aforesaid, certify the foregoing to be a true transcript of the record and proceedings in the case of Gamache et al. vs. Piquignot et al., as fully as the same remains in my office.

In testimony whereof I hereunto set my hand, and affix the seal of said court, at office, in the city of St. Louis, this sixth day of October, eighteen hundred and fifty-two. [L. S.]

M. S. CERRE, *Clerk.*

Said transcript, as above certified by said clerk of said circuit court, was filed in the office of the clerk of the supreme court of said State of Missouri, at St. Louis, on the seventh day of October, in the year of our Lord eighteen hundred and fifty-two.

And afterwards, on the twenty-third day of October, in the year aforesaid, the following proceedings were had, to wit:

LOUIS D. GAMACHE et al.
vs.
FRANCIS X. PIQUIGNOT et al. } Error to St. Louis circuit court.

An assignment of errors is now filed herein. Said assignment of errors is in words and figures as follows:

LOUIS D. GAMACHE et al., plaintiffs in error,
vs.
FRANCIS X. PIQUIGNOT et al., def'ts in error.

In supreme court, October term, 1852.

And now at this day come the said plaintiffs, by their attorneys, N. & S. A. Holmes, and say, that there is manifest error in the record and proceedings aforesaid, and in giving judgment in the court below, in this, to wit:

1. That the evidence offered by the plaintiffs, and excluded by the court below, was excluded from the jury, when, by the law of the land, the same ought to have been admitted; and in this, to wit:

2. That evidence, offered by the defendants and admitted by the court, was admitted to the jury, when, by the law of the land, the same ought to have been excluded; and in this, to wit:

3. That the court below refused instructions asked for by the plain-

3149

tiffs which ought to have been given, and gave instructions asked for by the defendants which ought to have been, by the law of the land, refused; and in this, to wit:

4. That the court below overruled the plaintiffs motion for a new trial, when, by the law of the land, the same ought to have been sustained, and a new trial granted; and in this, to wit:

5. That the said judgment was given for the defendants, when, by the law of the land, the same ought to have been given for the plaintiffs.

N. &. S. A. HOLMES,
Att'ys for plaintiffs.

And on the same day a joinder in error is filed, which is as follows: "There is no error."

FIELD,
Attorney for defendants.

And on the fifteenth day of November following, the following proceeding was had in this cause:

LOUIS D. GAMACHE et al.
vs.
FRANCIS X. PIQUIGNOT et al.
} Error to St. Louis circuit court.

Now come again the attorneys for the plaintiffs in error herein, and file a notice served on the defendants in error, that a writ of error has been sued out in this cause.

Said notice is in words and figures as follows:

LOUIS D. GAMACHE et al.
vs.
FRANCIS X. PIQUIGNOT et al., Inhabitants of the town of Carondelet.

In supreme court, October term, 1852.

Take notice, that the plaintiffs in the above entitled cause have sued out of the supreme court a writ of error in said cause to the St. Louis circuit court, returnable to the October term of the supreme court to be held on the third Monday in October, 1852, at St. Louis, county of St. Louis, when and where you may appear if you think proper.

St. Louis, October 1st, 1852.

N. & S. A. HOLMES,
Att'ys for the plaintiffs.

To R. M. FIELD, Esq.,
Attorney for said defendants.

"I acknowledge proper service of the above notice."

FIELD.

And on the same day, to wit, on the fifteenth day of November, eighteen hundred and fifty-two, at said October term, the following proceedings were had:

Argued and submitted.

LOUIS D. GAMACHE et al.
vs.
FRANCIS X. PIQUIGNOT et al. } Error to St. Louis circuit court.

Now come again the attorneys for the respective parties herein, and argue this cause, and submit the same to the court for decision.

And afterwards, on the eighteenth day of December, in the year aforesaid, to wit, eighteen hundred and fifty-two, the following proceedings were had:

Judgment. Judgment.

LOUIS D. GAMACHE et al.
vs.
FRANCIS X. PIQUIGNOT et al. } Error to St. Louis circuit court.

Now come again the parties herein, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by said circuit court rendered, be in all things affirmed, and stand in full force and effect; and it is further considered by the court, that said defendants in error recover against said plaintiffs in error their costs and charges herein expended, and have thereof execution.

And on the same day, to wit, on the 18th day of December, 1852, there was a written opinion delivered by said supreme court, and filed with the clerk of said court, which is in words and figures as follows:

Opinion.

GAMACHE and others
vs.
PIQUIGNOT and others.

This was an action of ejectment, to recover possession of a small piece of land near the town of Carondelet, brought by Gamache and others against Piquignot.

The plaintiffs claimed that the title of their ancestor, John B. Gamache, was confirmed by the act of the 13th June, 1812. In support of this position there was offered in evidence certain documents issued from the office of the recorder of land titles. The first was a paper claimed to be a certificate of confirmation issued by Conway, the recorder of land titles, dated 22d January, 1839, under the act of Congress of the 26th May, 1824. The second was an extract from the registry kept by the recorder of certificates, issued by him under the act of 1824, by which it appears that Conway entered the certificate of

Gamache's representatives on that register on the 12th March, 1839, and furnished on that day to the surveyor general a description of the land. The third was an extract from the additional list of claims furnished by the recorder to the surveyor general on the 12th March, 1839, which addition was of the Gamache claim alone. There were other documents showing that Hunt, who was the recorder of land titles who acted under the act of 1824 in taking proof of claims, and who filed with the surveyor the list of claims proved before him, had filed one or two supplemental or explanatory lists after the first.

The court below rejected the evidence offered.

A survey of the claim of Gamache was made by a deputy surveyor under instructions from the surveyor general, and the survey being returned to the office by the deputy and a plat made, the word "approved" was written upon it and signed by the then surveyor general, but it never was recorded. It appeared in evidence that the practice of the surveyor's office, when a deputy surveyor made return of a survey which he had been instructed to make, was, to have the survey examined, to see the manner in which the deputy had followed the instructions given, and if he had followed them, his work was approved, and the approval evidenced by such writing as had been made in this case, which was intended to authorize the payment of the deputy for his work; and that subsequently the survey was more carefully examined, and if found to be a proper survey in all respects it was recorded in the books of the office, which was the evidence that it was finally adopted and approved, and that by the practice of the office certified copies of surveys were not given out until they were thus finally approved and recorded. Conway, who had been surveyor general as well as recorder, testified that he would regard the survey of the Gamache claim as an approved survey, and would record it as such if he were in the office.

It appeared in evidence that the present surveyor general refuses to record it as an approved survey, or to certify it to the recorder as a survey of land for which a certificate of confirmation is to issue, and that in that refusal he is sustained by the department at Washington.

After the evidence was closed, the court, by an instruction, declared the survey was not evidence of title nor of the boundaries and extent of the Gamache claim.

A certified copy of the affidavits made before recorder Hunt, when he was taking proof under the act of 1824, was in evidence, but an instruction given to the jury substantially excluded them from consideration.

The plaintiffs gave evidence of cultivation and possession of a tract of land, of which the premises in controversy were alleged to form a part, claiming it to be an out lot of the village of Carondelet, the title to which was confirmed by the first section of the act of 13th June, 1812. The question of fact arising upon this part of the case was, whether the tract upon which the cultivation of Gamache was made embraced the premises in dispute.

The defendant claimed the premises under a lease from the corporation of Carondelet as a part of the commons.

The court, at the instance of the plaintiffs, gave the following instructions:

1. If the jury believe from the evidence that John B. Gamache, senior, was an inhabitant of the village of Carondelet prior to the 20th day of December, 1803; that he claimed and inhabited, cultivated, or possessed prior to that date the tract of land described in the declaration in this case as an out lot or cultivated field lot adjoining or belonging to said village, they will find for the plaintiffs for that portion of that tract which is embraced in lots No. 34 and 33, except sixty-six feet in width on the south side of said lot No. 33 of Mackay's subdivision, survey No. 2.

2. The jury are instructed that inhabitation, cultivation, or possession of a part of a lot, claiming the whole, is in law an inhabitation, cultivation, or possession of the whole lot claimed, within the true meaning and intent of the act of Congress of 13th June, 1812.

3. The jury are instructed that the defendants have given no such evidence of adverse possession of the land in controversy in this case for twenty years prior to the commencement of this suit, as is sufficient in law to constitute an adverse possession that can bar this suit under the statute of limitations; provided the jury also believe that the tract of land in the declaration mentioned was claimed and inhabited, cultivated, or possessed as an out lot or cultivated field lot of said village of Carondelet by John B. Gamache, senior, prior to the 20th day of December, 1803.

The court refused to give the following instructions, which were asked by plaintiffs:

4. The jury are instructed that as against such a claim and cultivation or possession, or that mentioned in said second instruction, no adverse user as commons as a ground of title, under the act of Congress of 13th June, 1812, can prevail, unless such user existed in fact by an actual occupation and use as commons of the same ground, visible and continued notorious, hostile and exclusive, [and then] only to the extent that such actual occupation and use as commons existed in fact, and to the exclusion of such claim and cultivation or possession by Gamache of the same land as an out lot or cultivated field lot of the village prior to the 20th day of December, 1803; provided the jury also believe from the evidence that the tract of land in the declaration described was claimed and inhabited, cultivated, or possessed by John B. Gamache, senior, prior to the 20th December, 1803, as an out lot or cultivated field lot of said village, with such a cultivation or possession as that mentioned in the said second instruction for the plaintiffs.

5. If the jury believe from the evidence that the claim of the village of Carondelet to commons prior to the 20th day of December, 1803, was founded north (in part) [by] the cultivated lands of the village, and that prior to said date the lot of land in said declaration described as having been claimed by Gamache was one of the cultivated lands

of the village, then there is no conflict of title in this case, and the defendants have shown no title to the land in controversy.

6. The jury are instructed that, on the evidence given in this case, the statute of limitations is no bar to this action, unless they shall believe from the evidence that the town of Carondelet, or those holding under said town, have had an adverse possession in fact of the land in controversy in this case by an actual occupation on the ground, visible and continued notorious, hostile and exclusive, for at least twenty years next preceding the commencement of this suit.

7. The jury are instructed that the survey No. 120 and the plats and field notes thereof, given in evidence by the plaintiffs, are evidence of the true location, extent, and boundary of the out lot of the village of Carondelet claimed under John B. Gamache, senior, by his legal representatives.

8. The certified extract from the minutes of Recorder Hunt, taken under the act of Congress of 26th May, 1824, *are* evidence that the tract of land therein mentioned and described was claimed and inhabited, cultivated, or possessed, by John B. Gamache, sen'r, prior to the 20th day of December, 1803, and evidence that the same was confirmed *by* John B. Gamache, sen'r, or his legal representatives, by the act of Congress of the 13th of June, 1812.

9. The certified extract from registry of certificates from the recorder's office, offered in evidence, that the out lot therein mentioned was confirmed to John B. Gamache, sen'r, or his legal representatives, by the act of 13th June, 1812.

10. The certified extract from the list of claims transmitted by the recorder of land titles to the surveyor general, and certified from the office of the surveyor general, relating to the claims of the legal representatives of John B. Gamache, sen'r, in evidence of said claim and the extent and boundary thereof, and that the same was confirmed by the act of Congress of 13th June, 1812.

11. The certificate of confirmation of the recorder of land titles in Missouri, given in evidence by the plaintiffs, shows a prima facie title from the United States in the legal representatives of John B. Gamache, sen'r, to the land therein described.

The court, at request of defendants, gave the three following instructions:

1. If the jury find that the land spoken of by the witness as actually cultivated and possessed by Gamache did not embrace the land now in dispute, they ought to find for the defendant.

2. The survey No. 120, read by the plaintiffs, is no evidence of title nor of the extent and boundaries of Gamache's claim.

3. The testimony taken before Hunt, and read in evidence by the plaintiff, is not to be regarded by the jury in the present case, the defendant not insisting that the claim had been abandoned.

The jury gave a verdict for the defendant.

Part of the design of the act of 26th May, 1824, in requiring proof to be given before the recorder by the individual claimants of land un-

der the 1st section of the act of 1812, evidently was, that within a short period the Government should be in possession of sufficient evidence upon which to distinguish the private from the public property. The proceedings before the recorder were to be the basis of the action of the surveyor, and the time allowed for taking the proof before the recorder was limited to eighteen months. In the third section it is required that, "so soon as the said term shall have expired, he shall furnish the surveyor general with a list of the lots so proved to have been inhabited, cultivated, or possessed, to serve as his guide in distinguishing them from the vacant lots to be set apart as above described, and shall transmit a copy of such list to the commissioner of the general land office." The previous section of the act had provided, that "immediately after the expiration of the term allowed for proving such acts, it shall be the duty of the surveyor general" to designate and set apart the lots for the support of schools.

In the present case we have a recorder of land titles, fourteen years from the passage of this act, attempting to give the evidence of title, by issuing a certificate of confirmation, and certifying the claim to the surveyor general as one confirmed by the act of 1812. If the Government of the United States has confirmed the title set up by the plaintiffs by that act of Congress, then the party, as has been held in this court, does not lose his land by the failure to procure the evidence provided for by the act of 1824; and under these decisions, the plaintiffs in this case, after the evidence was rejected which they claimed was rightly issued under the last mentioned act, proceeded to prove the cultivation and possession of their ancestor, Gamache, and claimed that the title was confirmed by the act of 1812.

If the evidence of title purporting to be issued under the act of 1824 appeared undisputed by the United States, and acknowledged and treated by the Government as effectual, then it may be that a person who was a mere stranger to the title would not be allowed to dispute the correctness of the conduct of the officers in their attempts to carry out the law. But when we find that the Government itself, in its own officers, arrests the progress of the title, and the whole reliance of the party in this case is upon the acts of the recorder, the correctness of which is denied by the Government, we will examine his acts and give them effect only so far as they conform to the law.

That the recorder, under the act of 1824, was required to act in a quasi judicial character, is perfectly manifest, although there was no mode provided by the law for the expression of an opinion against the sufficiency of the evidence given before him. If a claim was, in his judgment, confirmed by the act of 1812, he issued to the party a certificate of confirmation, and included the lot in the descriptive list which he was required to furnish the surveyor general. If there was a failure to prove the inhabitation, cultivation, or possession, to his satisfaction, he simply omitted to include the claim in his list, and he issued no certificate.

The acts required to be done when a claim was confirmed were to

be done immediately after the expiration of the time limited for taking the proof; and when we see, from the evidence offered by the plaintiff, that the recorder filed his list of confirmations with the surveyor in October, 1827, near twelve years before Conway, his successor, returned the present claim to that office, we cannot avoid the conclusion that this latter act was not within the scope allowed for such proceeding by the act of Congress. It is not necessary to maintain that if Hunt, the recorder who took the proof, had died before he acted upon the claims, his successor could not act upon them; but when he did act, and made out and furnished to the surveyor the list required by law, the conclusion is one which the law draws, that claims not within that list are claims not proved to his satisfaction. The fact that other claims were reported by Hunt and annexed to his list, which were never disputed, is only evidence that the Government did not deal with these titles with any strictness; but when his successor takes up the book in which the affidavits of witnesses are contained, and undertakes to pronounce his judgment upon the testimony fourteen years after the affidavits were made, and twelve years after the list of Hunt was filed, his power to act upon the subject was properly denied by the other officers of the Government, and before this court his act has the character of mere nullity. Reference to several cases is made in support of the recorder's authority, but in none of the cases decided by this court has the present question been determined. In Macklot *vs.* Dubruil, 9 Mo. R., 478, the certificate which was issued by the recorder in 1842 was objected to as evidence, but the objection made and decided upon by the court was, that the recorder had not jurisdiction of the case, because the land in dispute was not a lot which could be confirmed by the act of 1812. In that case, the decision in Hunter *vs.* Hemphill, 6 Mo. Rep., 106, is remarked upon, and it is said to be conceded in the latter case, that the defendant might show that the paper title of the plaintiff was a mere nullity, because issued by an officer not authorized by law. In the very papers produced by the plaintiff, and which were at first offered together, there are affidavits made before Hunt, the recorder, in 1825, and every other paper is made by Conway in 1839. The question whether Conway had any authority to act upon the subject at the time he did was a question of law arising upon the evidence offered by the plaintiff, and required its exclusion if he had no legal authority to act. We think it clear that he had no such authority. Reference is made to expressions used in decisions of this court which are supposed to favor the idea that copies of the affidavits made before Hunt are competent evidence to establish the facts testified to by the witness. No such inference is fairly deducible from the language employed.

In Beihler vs. Coonce, 9 Mo. Rep., 351, it is said that the tabular statements from the books of the recorder are admissible in evidence, but the court is then speaking of "an extract from the registry of confirmations by the recorder of land titles." In Somers vs. McGill, 15 Mo. Rep., 87, it is said that a properly authenticated extract from the

descriptive list sent by the recorder to the surveyor's office is entitled to all the effect that an original certificate of confirmation would have; the sum of all the decisions is, that evidence from the recorder's books, and from the list sent to the surveyor's office, showing that he had acted upon the proof made before him, and had adjudged the claim to be confirmed, was admissible, without the production of the certificate In the present case, the extract from the registry of certificates, and the copy from the communication to the surveyor, both show that the action of the recorder, Conway, in 1839, was all the action ever had upon the claim as exhibited before Hunt.

The survey of the Gamache claim was properly excluded by the instruction, after the whole evidence was given. It was perfectly apparent, from the whole evidence relating to the survey, that it was not in that condition in the office in which it could be regarded as completed, so as to be binding on the Government or the party; it was but in progress, and had not received the sanction which the regulations and practice of the office required.

The first instruction given for the defendant, if it stood alone, would be so entirely erroneous as to require a reversal of the judgment. That the jury should be required to find for the defendant, if the cultivation by the elder Gamache was not a cultivation of the precise piece of ground in controversy, would have been so gross a mistake that neither the court nor the counsel asking the instruction could be supposed to have fallen into it. Accordingly, when we examine the second instruction given for the plaintiff, we find the court telling the jury that cultivation of a part of a tract, under claim of the whole, was, under the act of 1812, a cultivation of the whole tract; and, in looking into the case, we see that the controversy was whether this cultivation of Gamache was not on an entirely different tract from that now claimed to include the premises in dispute. We are satisfied that the jury must have understood the question to be, whether the cultivation of Gamache, spoken of by the witnesses, was at any place upon the tract to which his heirs now claim title, or at some place upon an entirely different tract. In this view of the question submitted to the jury, there would be no propriety in reversing the judgment for the instruction given for the defendant.

The instructions asked by plaintiffs, which were refused by the court, all refer to the proceedings in the recorder's office, the effect of which has been considered.

The judgment is, with the concurrence of the other judges, affirmed.

H. R. GAMBLE.

And afterwards, on the twelfth day of March, anno [domini] eighteen hundred and fifty-three, the following appeal bond was filed in this cause, to wit:

Appeal bond.

Know all men by these presents that we, John Cavender, as princi-

pal, and James Smith, as surety, both of the city and county of St. Louis, and State of Missouri, are held and firmly bound unto François X. Piquignot and the Inhabitants of the town of Carondelet, in the sum of five hundred dollars, lawful money of the United States, to them, their heirs, executors, administrators and assigns, to be well and truly paid; to which payment we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and signed, this twelfth day of March, 1853.

The condition of the above obligation is such, that whereas Louis D. Gamache, Samuel and Leonore Gamache, by their guardian, Wilson Prirum, Louis Prirum, John Cavender, and Abby P. True, have sued out a writ of error from the Supreme Court of the United States, directed to the supreme court of the State of Missouri, in a certain cause wherein they are plaintiffs, and the said François X. Piquignot and the Inhabitants of the town of Carondelet are defendants in error; now, if the said plaintiffs in error shall prosecute their said writ of error with effect, and answer all damages and costs if they fail to make their plea good, then this obligation shall be null and void; otherwise to remain in full force and virtue.

Witness our seals the day and year above written.

JOHN CAVENDER, [SEAL.]
JAMES SMITH, [SEAL.]

This bond approved.
H. R. GAMBLE.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, at St. Louis, certify the foregoing to be a full, true, and complete transcript of the record and proceedings of the supreme court in the cause herein first before entitled, as the same remains of record and on file in my office.

In testimony whereof I hereunto set my hand, and affix the seal of said supreme court, at office, in the city of St. Louis, this [SEAL.] twenty-first day of April, anno eighteen hundred and fifty-three.

WM. S. GLANVILLE, *Clerk.*

$60 50 fee for transcript, plats, certificate, and seal.
4 78 fee to marshal for serving citation.

$65 28

Assignment of Errors.

In the Supreme Court of the United States. December term, 1853.

LOUIS D. GAMACHE et al.
vs.
FRANCOIS X. PIQUIGNOT and the Inhabitants of the town of Carondelet. } No. 89.

And now at this day come the said plaintiffs, by John M. Krum, their

attorney, and say that in the record and proceedings aforesaid, and also in giving the judgments aforesaid, there is manifest error in this, to wit:

1. That evidence offered by the plaintiffs was excluded from the jury in the court below, when by the law of the land the same should have been admitted; and also in this, to wit:

2. That evidence offered by the defendants was admitted in the court below, when by the law of the land the same should have been excluded; and also in this, to wit:

3. That the court below refused instructions asked for by the plaintiffs, when by the law of the land the same should have been given; and in this, to wit:

4. That instructions asked for by the defendants in the court below were given, when by the law of the land the same should have been refused; and also in this, to wit:

5. That the court below overruled the plaintiffs motion for a new trial, when the same should have been granted; and also in this, to wit:

6. That judgment was given in the court below in favor of the said defendants against said plaintiffs, whereas by the law of the land the said judgment ought to have been given for the plaintiffs against said defendants; and in this, to wit:

7. That in the supreme court of the State of Missouri the judgment aforesaid of the court below was affirmed, when by the law of the land the said judgment should have been reversed, and judgment given therein in favor of the plaintiffs.

And the said plaintiffs pray, that the judgments aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of said judgments.

JOHN M. KRUM,
Attorney for plaintiffs in error.

3154.

SUPREME COURT OF THE UNITED STATES.

No. 89.

L. D. GAMACHE ET AL., PLAINTIFFS IN ERROR,

vs.

F. X. PIQUIGNOT ET AL.

Additional Record.

INDEX.

	Page
Notes on map A, filed by plaintiffs	1
Notes on map B, filed by plaintiffs	2
Notes on map No. 1, filed by defendants	3
Notes on map No. 2, filed by defendants	4, 5
Notes on map No. 3, filed by defendants	6, 7
Notes on map No. 4, filed by defendants	8

GIDEON, print.

Map A, filed by plaintiffs.

PLAT X.

[For plat see original, marked Map A.]

SURVEYOR GENERAL'S OFFICE,
St. Louis, the 10th April, 1850.

The survey No. 3103 of the common field of Carondelet, in townships 44 and 45 north, range 7 east, of the 5th principal meridian, is correctly delineated on the above plat, according to the field notes of the survey thereof on file in this office, which have been examined and approved. Said survey was executed by J. C. Brown in the first quarter of 1834, under instructions of the Surveyor General, dated the 10th of February, 1834, and was paid for in the second quarter of 1838, and charged in the account of the Surveyor General for that quarter, voucher No. 3, the lines of the survey being 6 miles and 19.58 chains, and the connecting lines 1 mile and 22.80 chains, together 7 miles and 42.38 chains.

(Signed) M. LEWIS CLARK,
Surveyor General.

OFFICE OF THE SURV'R GEN. FOR ILLINOIS AND MISSOURI,
St. Louis, January 17th, 1851.

I certify that the above plat of survey No. 3103, and certificate appended thereto, are correctly copied from a plat of said survey now in this office.

M. LEWIS CLARK,
Surveyor General.

Map B, filed by plaintiffs.

[For map see original, marked Map B.]

No. of survey.	
38.	John Eugene Leitensdorfer, under John Baptiste Gamache.
22.	John Eugene Leitensdorfer, under Baptiste Gamache.
62.	Lambert Lajoi's legal representatives.
61.	Joseph Boisvert's representatives.
39.	Joseph Hubert Tabeau's representatives.
40.	Diego Thabaut or J. H. Tabeau's representatives.
41.	Lambert Sallé dit Lajoye.
63.	Amable Guyon's legal representatives.
64.	Gabriel Hunot's legal representatives.
65.	George Shoultz.
66.	Peter Shoultz.
67.	Pierre Maison, under Abraham Dumond.
68.	Pascal Mallet, under Pierre Villery.
69.	Auguste Gamache's legal representatives.
55.	Francois Denoyer's legal representatives.
60.	Louis Constant, under Michel Tesson dit Honoré.
59.	Bartholemy Berthold, under Paul Robert.
56.	Julien Chouquette.
57.	Joseph Menard's legal representatives.
58.	John Baptiste Maurice Chatillon.
54.	Julien Chouquette.
42.	Gabriel Constance, jr., under Gabriel Constance, sr.
43.	Leon Constant's legal represent'ves, under Gabriel Constant, sr.
44.	Francis Fournier.
45.	Gabriel Constance, jr., under Amable Chartrand.
46.	Louis Menard's legal representatives.
47.	Louis Courtois.
48.	Louis Courtois, under Louis Courtois, sr.
49.	Manuel Andrew Rocque, under Nicholas Gay dit Gravier.
50.	Henry Chouquette, under Amable Chartrand.
51.	Louis Desnoyers.
53.	Louis Mouquez.
52.	Amable Chartrand, sr., legal repre'tives under Louis Mouquez.
12.	Joseph Leduc's legal representatives.
70.	Louis Courtois.
71.	Auguste Gamache, under Louis Courtois.
72.	Joseph Menard, under Lambert Lajoye.
A.	Gabriel Hunot, under Pierre Villeroy.

Gamache et al. vs. *Piquignot et al.*

3/57.

Map No. 1, *filed by defendants.*

CONNECTED PLAT OF THE TOWN OR VILLAGE OF CARONDELET.

[For plat see original, marked Map No. 1.]

OFFICE OF THE SURV'R GEN. FOR ILLINOIS AND MISSOURI,
Saint Louis, March 1*st*, 1854.

I certify that the above plat is a correct copy of the plat of the village of Carondelet, returned by Joseph C. Brown, deputy surveyor, with the field notes of the survey of the said village, under instructions from the Surveyor General, dated the 15th March, 1839, all on file in this office.

JOHN LOUGHBOROUGH,
Surveyor General.

Map No. 2, filed by defendants.

CARONDELET VILLAGE.

[For map see original, marked Map No. 2.]

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *St. Louis, April 10th,* 1850.

The above diagram in its essentials is a correct copy of the original diagram on file in the office of the United States recorder of land titles, who has, on the 26th February last, transmitted a fac simile copy of said original to this office, certified as follows, in part:

"The said original purports to be the diagram on which Theodore Hunt, recorder of land titles in the State of Missouri, noted the lots in the village of Carondelet, of which the extent, boundaries and possession, were proven before him, pursuant to the first section of the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled "An act making further provision for settling the claims to land in the Territory of Missouri." The names of individuals, the numbers of the blocks, the designations of the streets and cardinal points, in black ink on this copy, appear to be in said Hunt's handwriting on the original. The words on the above in red ink are from some unknown hand in the original."

As some of these names (in red on the above) are unintelligible on the original, both from misspelling and the paleness of the ink, the supposed true names are given in brackets to facilitate examination. Upon the plat are also given in blue ink the numbers of the blocks or squares of the village, as represented on Joseph C Brown's map, being different from the number given by Recorder Hunt, and to which he refers in his minutes. It will be observed that in the numeration by Hunt, he has repeated the number of blocks from 19 to 28 inclusive, and also of blocks 14 and 44; also that the letter "M" has been set down twice in the designation of the streets, by which mistake H street has sometime been called M street in his minutes. It will be recollected that on this diagram the black lines and lettering refer only to Hunt's map; the blue and red references have been since added, as above mentioned.

(Signed) M. LEWIS CLARK,
Surveyor general.

NOTE.—Copy of this map transmitted this day to the commissioner of the general land office, with letter of this date.

(Signed) M. LEWIS CLARK,
Surveyor general.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *Saint Louis, February 14th*, 1854.

The above diagram, together with the annexed certificate and note, are correctly copied from a similar document preserved on file in this office.

JNO. LOUGHBOROUGH,
Surveyor general.

Map No. 3, filed by defendants.

RECTOR'S SURVEY.

[For map see original, marked Map No. 3.]

Surveyed the commons of Carondelet.

Began at a stone on the bank of the Mississippi river, N. E. corner; thence N. 82 W. 35.00 to B. O., 18 in. dia. 68 lks., north side of the S. E. corner of Pierre Delore's, 1½ arpens in the east side of the common field of Carondelet; thence with the field S. 15 W. 26.96; thence S. 21 W. 48.17, to the S. E. corner of Doctor Pail's land and the S. E. do. of the field of Carondelet; thence N. 56 W. 118.00, to the S. W. corner of the field; thence S. 36 W. 58.69 to the river Des Pare, 100 links wide, runs S. 48 E., 315 chains to Gravel creek, 50 lks. wide, runs S. E., 437 chs. 50 lks. to the S. W. corner of the commons; thence S. 54 E. 264 chains to a stone on the bank of the Mississippi river; thence up the river with the meanders of the same, N. 10 E. 195 ch., N. 17 E. 38, N. 10 E. 25, N 4 W. 51, N. 20 E. 18, N. 40 E. 25, to the mouth of river Des Pare 2c. 50l. wide; thence N. 47 E. 7.50, N. 32 E. 58c. 50l., N. 7 W. 15.00, N 22 E. 21c. 19l., to the S. E. corner of the village of Carondelet; thence up the river, N. 42 E. 54c. 50l., N. 35 E. 4.91, set stone, N. E. corner of the village of Carondelet, which village is two lots deep of 300 French feet, each with a street 36 do. French wide; the lots run from the river N. 59 W., 53c. 91l. to the N. E. corner of the commons and place of beginning. E. R.

SURVEYOR'S OFFICE, *Saint Louis, 15th April*, 1840.

The foregoing notes are correctly copied from the original field notes on file in this office, of the survey of the Carondelet common, as executed by Elias Rector, deputy surveyor. The said notes are without date, but the survey was executed and the notes taken before the year 1817; they were to my knowledge on file in this office in the forepart of that year, and have always since that time been acted upon as the official notes and survey of said common, as supposed to be confirmed by the act of Congress of the 13th of June, 1812. This plat is conformable to said notes.

This survey having been executed before the survey of the adjoining public lands, and the public surveys not having been properly connected therewith, the adjoining fractions outside of the common

were withheld from sale, at the sale of the other lands in Ts. 43 and 44 N., R. 6 E., and 43 N., R. 7 E.

(Signed) WILLIAM MILBURN,
Surveyor of the public lands in the States of Illinois and Missouri.

OFFICE OF THE SURV'R GEN. FOR ILLINOIS AND MISSOURI,
Saint Louis, February 13th, 1854.

The foregoing plat, descriptive notes and certificate, are correctly copied from pages 25 and 26 of letter book G in this office; said pages purport to contain the record of document D, which accompanied the the surveyor general's report of the 15th April, 1840, to the Commissioner of the General Land Office.

JNO. LOUGHBOROUGH,
Surveyor general.

Map No. 4, *filed by defendants.*

Survey No. 2965, (present number, 3102.)

[For map see original, marked Map No. 4.]

Survey No. 2965, (*present number*, 3102.)

Plat and description of the survey of the commons of Carondelet, as executed by Jos. C. Brown, deputy surveyor, from the 11th to the 17th of March, 1834, under instructions of the 10th February, 1834, containing $9905\frac{2}{100}$ acres of land.

Beginning at two stones, a corner of this survey, and southeast corner of the common field of Carondelet; one of which stones is 15 inches long, 3 inches thick and 12 inches broad, the other thicker and longer and 8 inches broad:

Thence N. $56\frac{1}{4}°$ W. along the southern boundary of the said common field, which is a line of this survey, 4 chains 50 links, an old stone; 42 chains and 50 links to a branch 10 links wide, which runs southward; 118 chains and 16 links to a stone, the S. W. corner of said common field and corner of this survey, on the eastern boundary line of Alvarez's survey:

Thence S. $35\frac{1}{2}°$ W. with Alvarez's line; 60 chains to the left bank of river Desperes, 153 links wide, which runs eastward; 120 chains, Saunders' door is 35 links westward; 193 chains 85 links, a spring branch 4 links wide runs eastward, 201 chains and 36 links, Alvarez's S. E. corner stone:

Thence N. 54° 20′ W. with Alvarez's S. W. boundary line, 183 links to a post at the intersection of the old line of this survey with Alvarez's southwestern boundary line, (which is 14 chains 6 links, S. 54° 20′ E. of the corner in said line to section 13, 14, 23 and 24, township 44 N., range 6 east of the 5th principal meridian,) from which post a hickory 11 in. diameter (marked as a sight tree of old) bears N. 36° E. 39 links, and a white oak 25 inches in diameter bears N. 54° W. 52 links distant:

Thence S. 36° 20′ W. with the old line; 19 chains and 81 links to the line between sections 23 and 24 in said township, a post corner to fractional sections 23 and 24; 24 chains and 31 links south of the corner to sections 13, 14, 23 and 24 aforesaid, from which post a black jack 6 inches in diameter bears N. $38\frac{1}{2}°$ W. $55\frac{1}{2}$ links, and a post oak 15 inches in diameter bears N. $7\frac{1}{4}°$ E. 129 links distant; 20 chains and 71 links, an old stone in the line, 62 chains 61 links, a road leading to Jefferson barracks; 87 chains and 21 links to a post on the line between sections 23 and 26 in said township corner to said fractional sections 23 and 26, (226 links east of the $\frac{1}{4}$ section corner,) from which post a

red oak 9 inches in diameter bears N. 47¼° W. 98 links, and a red oak 14 inches in diameter bears S. 43½° W. 161 links distant; 133 chains and 71 links, Gravois creek, 30 links wide, runs eastward; 159 chains 73 links to a post on the line between sections 26 and 27 in said township corner to said sections 26 and 27; 17 chains and 57 links south of the quarter section corner, from which post a red oak 12 inches in diameter bears S. 29° E. 23 links, and a white oak 14 inches in diameter bears N. 81° E. 103 links distant; 187 chains and 16 links to a post on the line between sections 27 and 34, in said township, corner to said sections 27 and 34; (25 chains and 19 links east of the quarter section corner) from which post a post oak 25 inches in diameter bears N. 17° W. 24 links, and a red oak 13 inches in diameter bears S. 85° W. 87 links distant; 214 chains and 71 links to a road leading from Gravois to Jefferson barracks; 271 chains and 81 links to the old S. W. corner of this survey, which is a cluster of stones, where is also set a post from which a post oak 20 inches in diameter bears N. 71½° E. 66 links, and a white oak 16 inches in diameter bears S. 13° E. 88 links distant:

Thence S. 52½° E. 22 chains and 28 links to a post on the line between sections 3 and 34, in townships 43 and 44 north, range 6 east of the 5th principal meridian, for corner to said sections 3 and 34; 33 chains and 62 links east of the corner to sections 3, 4, 33 and 34 in said townships, from which post a red oak 13 inches in diameter bears S. 38½° E. 64 links, and a post oak 18 inches in diameter bears S. 55° W. 53 links distant; 82 chains 80 links to a post on the line between sections 2 and 3 in township 43 north, range 6 east of the 5th principal meridian, for corner to said fractional sections 2 and 3; 20 links north of the quarter section corner, from which post a red oak 14 inches in diameter bears S. 47½° W. 70 links, and a red oak 12 inches in diameter bears S. 6½° E. 74 links distant; 149 chains 90 links, a post on the line between sections 2 and 11 in said township 43 north, range 6 east, corner to said fractional sections 2 and 11, (12 chains and 58 links east of the ¼ section corner,) from which post a red oak 14 inches in diameter bears S. 4° E. 69 links, and a hickory 10 inches in diameter bears S. 72½° W. 72 links distant:

Thence S. 53½° E. 35 chains and 10 links to a post on the line between sections 11 and 12, in township 43 north, range 6 east, corner to said fractional sections 11 and 12, (20 chains and 36 links north of the quarter section corner,) from which post a red oak 18 inches in diameter bears S. 37° W. 29 links, and a red oak 20 inches in diameter bears S. 1½° E. 127 links distant, 132 chains 70 links to a post on the line between sections 7 and 12, in township 43 and 43 north, ranges 6 and 7 east of the 5th principal meridian, corner to said fractional sections 7 and 12, (9 chains and 71 links north of the corner to sections 7, 12, 13 and 18 in said townships and ranges,) from which a post oak 14 inches in diameter bears S. 18° W. 47 links; and a post oak 12 inches in diameter S. 14½° E. 79 links distant; 148 chains 24 links the S. E. corner of this survey on the brow of the hill at the river Mississippi, which corner is a large curiously shaped stone leaning against a post oak tree 14 inches in diameter:

Thence S. 84° E., 2 chains 43 links, to moderate high water-mark of the Mississippi; thence meander up the said river Mississippi, N. 12° E., 31 chains; north 15 chains; N. 6½° E., 17 chains; N. 17° E., 18 chains 50 links, (at 9 chains on this line is the mouth of Martigny creek;) N. 56° E., 3 chains; N. 18° E., 15 chains; N. 10½° E., 8 chains; N. 11¾° E., 47 chains 34 links; N. 2½° E., 9 chains; N. 10° E., 31 chains, (the flag-staff at Jefferson barracks bears N. 3° 20′ W.;) N. 19½° E., 52 chains and 38 links, (hence the flag-staff at Jefferson barracks bears S. 87¼° W.;) N. 10° E., 34 chains and 20 links; N. 1° W., 17 chains 50 links; N. 5¾° E., 11 chains; N. 3½° E., 6 chains; N. 8¾° E., 5 chains 36 links; N. 12° E., 9 chains; N. 24¼° E., 11 chains; N. 31° E., 10 chains; N. 44° E., 9 chains; N. 47½° E., 9 chains 50 links; N. 43½° E., 10 chains 88 links, the mouth of the river Des Peres, N. 61½° E., 2 chains 54 links, across the mouth of river Des Peres, N. 47° E., 9 chains; N. 33¾° E., 13 chains 87 links; N. 30¼° E., 44 chains; N. 5° W., 13 chains 50 links; N. 14° E., 11 chains; N. 30½° E., 20 chains; N. 38° E., 38 chains; N. 52° E., 8 chains 72 links; N. 35° E. (3 chains 58 links to the south edge of the street that passes by and north of Colburn tavern in the village of Carondelet,) in all this course 18 chains, N. 32¾° E., 41 chains 50 links; N. 56° W. 78 links, to the N. E. corner of this survey, which is a post on the bank of the Mississippi river, from which a sycamore 10 inches in diameter bears S. 12° E., 24 links, and an elm 11 inches in diameter bears N. 46° E., 38 links distant. (The connection from this corner to the S. E. corner of *of* the common of St. Louis is as follows, namely: S. 56° E., 78 links, N. 25¼° E., 11 chains and 90 links.)

From said N. E. corner of this survey of the commons of Carondelet N. 82° W., 41 chains and 35 links, to a stone 18 inches long, 4 inches thick and 12 inches broad, and set 9 inches in the ground with the edge east, the N. W. corner thereof in the front line of the common fields of the village of Carondelet, 5 chains and 72 links southward of the intersection of said front line with the south boundary line of St. Louis commons:

From said N. W. corner stone of the Carondelet commons S. 14° 40′ W., along the front line of said common fields, which is a line of this survey; at 70 links a stone, at 5 chains and 10 links a stone, at 9 chains 48 links a stone, at 18 chains 21 links a stone, at 26 chains 96 links a stone, one of the corners of this survey; all these stones set of old:

Thence S. 26° 10′ W., along another line of the front of said common fields; 17 chains and 47 links, a stone, corner of this survey, and also one of the corners to the common field aforesaid; said stone is 27 inches long, 5 inches thick and 8 inches wide:

Thence S. 36° W., 25 chains and 64 links to the beginning.

SURVEYOR'S OFFICE, *St. Louis, 29th July*, 1834.

The foregoing plat and description of the survey of the commons of Carondelet, containing $9905\frac{8}{100}$ acres, are conformable to the original field notes on file in this office; the said survey contains within its limits